

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 638.

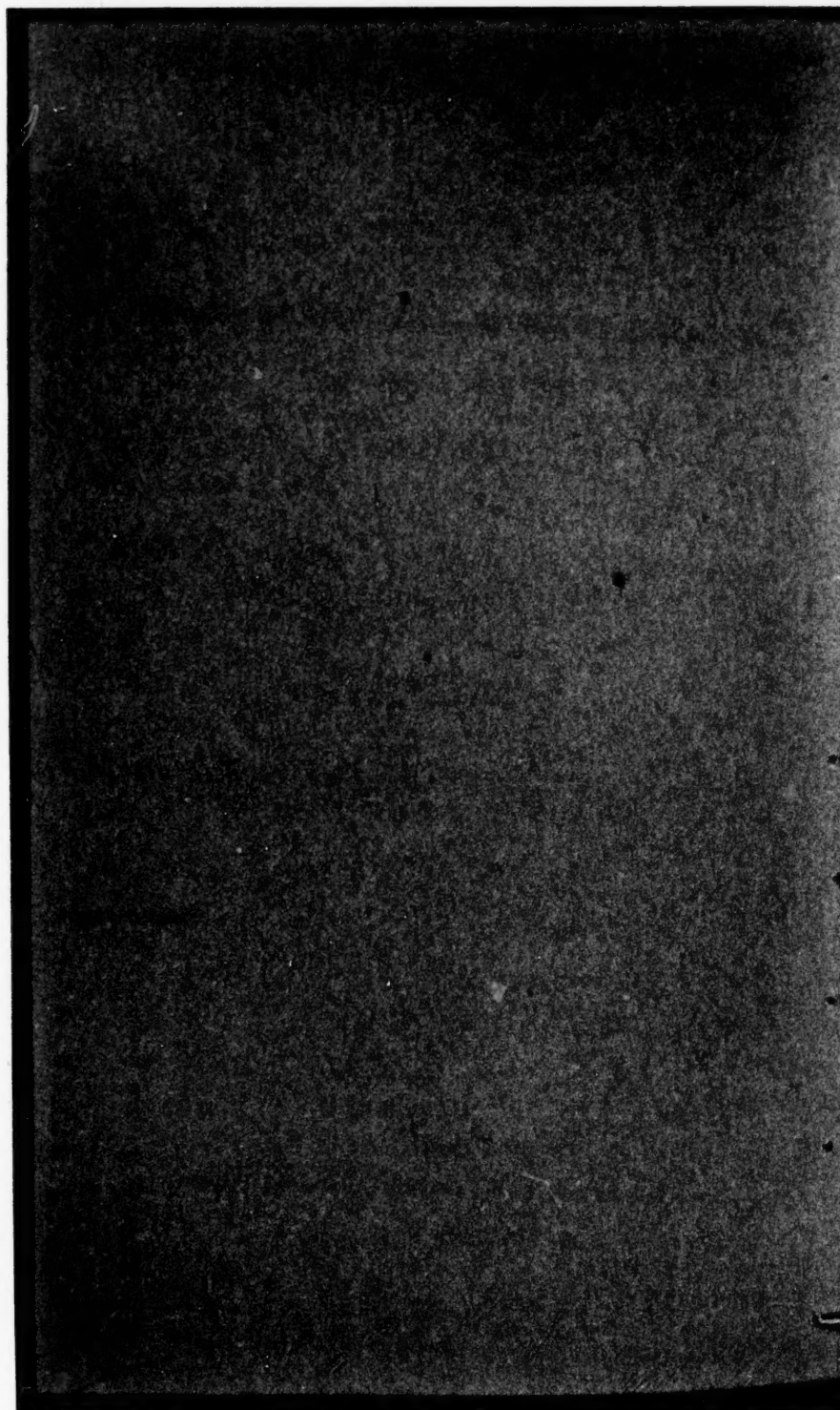
CHRISTOPHER STRASSHEIM, SHERIFF OF COOK
COUNTY, ILLINOIS, APPELLANT,

vs.
MILTON DAILY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 14, 1913.

(22,259.)



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- 1 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois, begun and held at the United States Court Rooms in the City of Chicago in said Division of said District on Tuesday, July 6, in the year of our Lord one thousand nine hundred and nine and of the independence of the United States of America the one hundred thirty-fourth year.

Present the Honorable Francis M. Wright, Judge of the District Court of the United States for the Eastern District of Illinois, and the Honorable Arthur L. Sanborn, Judge of the District Court of the United States for the Western District of Wisconsin, sitting in this court by designation presiding, Luman T. Hoy, United States Marshal for the Northern District of Illinois, and T. C. MacMillan, Clerk of said Court.

- 2 And afterwards, to wit, on the 23rd day of June, A. D. 1909, the following order was had and entered of record in said cause to wit:

No. 10309.

In the Matter of the Application of MILTON DAILY for a Writ of Habeas Corpus.

It appearing upon the reading and filing of the petition of Milton Daily, by him duly signed and verified, that the said Milton Daily is illegally imprisoned, confined, detained and restrained of his liberty by Christopher Strassheim, Sheriff of the County of Cook, in the State of Illinois at the county jail in the said County of Cook, and it also appearing wherein said illegality consists, it is considered that a Writ of Habeas Corpus should issue as prayed for in said petition. It is therefore.

Ordered that a Writ of Habeas Corpus be and the same is hereby ordered to be issued out of the United States District Court for the Northern District of Illinois, Eastern Division, under the seal of said court, directed to the said Christopher Strassheim, Sheriff of said Cook County, commanding him to have and produce the body of the said Milton Daily before me in the court room in said United States District Court on the 23rd day of June, One Thousand Nine Hundred and Nine, at 2.15 o'clock in the afternoon of that day, to do and receive what shall then and there be considered concerning the said Milton Daily and that he have then and there said writ of Habeas Corpus together with the day and cause of the caption and detention of said Milton Daily.

- 3 And afterwards, to wit, on the 23rd day of June, A. D. 1909, there was filed in the Clerk's Office of said Court, in

the above entitled cause, a Petition for Writ of Habeas Corpus; same being in the words and figures following, to wit:

4 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In the Matter of the Application of MILTON DAILY for a Writ of Habeas Corpus.

Petition for Writ.

To the Honorable Kenesaw M. Landis, Judge of said District Court:

The Petitioner, Milton Daily, of the City of Chicago, in the State of Illinois, complaining, shows that he is now imprisoned and restrained of his liberty by Christopher Strassheim, Sheriff of the County of Cook in the said State of Illinois, at the Jail of said Cook County; that your petitioner is thus imprisoned and held in custody under color of the authority of the Constitution of the United States relating to the return of fugitives to the State or Territory from which they fled; that said Christopher Strassheim claims to hold in custody and imprison your petitioner for the purpose of delivering your petitioner to one Jacob F. Strobel, Agent of the State of Michigan, to be, by said Jacob F. Strobel, transported to the State of Michigan, under and by virtue of a certain extradition warrant issued by the Governor of the State of Illinois, of the tenor following:

5 "STATE OF ILLINOIS,
Executive Department:

Charles S. Deneen, Governor of Illinois, to to any Sheriff, Coroner or Constable of any County in this State, Greeting:

The executive authority of the State of Michigan demands of me the apprehension and delivery of Milton Daily, represented to be a fugitive from justice, and has moreover, produced and laid before me the copy of an indictment and warrant made by and before a properly empowered officer in and of the said State in accordance with the laws thereof charging Milton Daily, the person so demanded, with having committed against the laws of the said State of Michigan the crime of bribery and obtaining ten thousand dollars in money by false pretenses which appears by the said copy of an indictment and warrant certified as authentic by the Governor of the said State now on file in the office of the Secretary of State of Illinois and being satisfied that said Milton Daily is a fugitive from justice and has fled from the State of Michigan.

Therefore, in compliance with the constitution and the laws of the United States and of this State in the name of the People of the State of Illinois, you are hereby commanded to arrest and secure the said fugitive Milton Daily if he be found within the limits of this State and deliver him into the custody of Jacob F. Strobel the agent

of the Executive authority of the said state of Michigan appointed to receive the said fugitive.

Provided, such agent shall appear within six months from the time of the arrest, and the said agent is hereby empowered to transport the said fugitive, without hindrance or molestation of any sort or in any manner to the extreme limits of this State, in furtherance of his authority, he paying all costs and fees for the arrest, detention and delivery of the said fugitive. And you make due and formal return to this Department, of the time and manner in which this writ may be served.

In testimony whereof, I hereunto set my hand and cause to be affixed the Great Seal of State.

Done at the City of Springfield, this 21st day of May, A. D. 1909. and of the Independence of the United States the 133rd.

By the Governor:

CHARLES S. DENEEN.

JAMES A. ROSE,
Secretary of State.

6 And your petitioner, Milton Daily, further shows that said extradition warrant issued by the Governor of the State of Illinois was granted on a requisition from the Governor of the State of Michigan, reciting that your petitioner stands charged, by indictments, in the State of Michigan, with the crime of bribery and with the crime of obtaining ten thousand dollars in money by false pretences, and that he, your petitioner, was a fugitive from the justice of the State of Michigan.

And your petitioner further shows that said requisition was accompanied by copies of two indictments and certain other papers, one of which indictments purports to charge your petitioner with the crime of bribery, and the other of which indictments purports to charge your petitioner with the crime of obtaining ten thousand dollars in money by false pretences, and that your petitioner has read said extradition warrant, said requisition, said copies of indictments, and all the papers which accompanied said requisition, and that your petitioner knows the contents of said extradition warrant, of said requisition, of said copies of indictments, and of said papers, and that said copies of said indictments and said papers do not contain any evidence tending to prove that your petitioner was personally present within the State of Michigan at the time or times said
7 supposed crimes of bribery and obtaining ten thousand dollars in money by false pretenses were stated, either in said indictments or in said papers, to have been committed; that no other evidence was offered to, or received by, the Governor of the State of Illinois for the purpose of obtaining said extradition warrant, except such evidence as is contained in said copies of said indictments and in said papers; that the Governor of the State of Illinois had no jurisdiction to issue said extradition warrant, in that it did appear from any evidence produced before him, said Governor of the State of Illinois, that your petitioner was a fugitive from the justice of the

State of Michigan or had fled therefrom, and in that it did not appear before him, said Governor of the State of Illinois, that there was any evidence whatever tending to show that your petitioner was personally present in the State of Michigan when said crimes were alleged to have been committed, and in that it appeared on the face of the copies of said indictments which accompanied said requisition, that no crime, under the laws of the State of Michigan, was charged or had been committed.

And your petitioner further shows that he, your petitioner, is not a fugitive from the justice of the State of Michigan, within the meaning of the Constitution and laws of the United States.

8 And your petitioner further shows that said imprisonment and restraint of your petitioner is illegal and in violation of the Constitution and laws of the United States for the foregoing reasons and because of the matters and things hereinbefore and hereinafter stated.

And your petitioner further shows that for some reason, probably a clerical error, said copies of indictments are referred to and mentioned in said extradition warrant as "the copy of an indictment," and that said copies of indictments are hereinafter referred to and designated as "Indictment Exhibit A" and "Indictment Exhibit B," respectively.

And your petitioner further shows that said "Indictment Exhibit A" is in the words and figures following, to wit:

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"INDICTMENT EXHIBIT A."

STATE OF MICHIGAN,

County of Jackson, ss:

The Circuit Court for the County of Jackson, at the March Term,
A. D. 1909.

The grand jurors of the said State of Michigan, in and for said County of Jackson, and inquiring in and for the body of said County, upon their oath, do present that:

Heretofore, to wit: on the first day of June, A. D. 1907, and from thence hitherto one Allen N. Armstrong was an executive officer of said State of Michigan, to wit: Warden of the Michigan State Prison at Jackson in said State and was duly appointed, qualified and acting as such warden and was then and there, under the provisions of Act number two hundred and eleven of the Public Acts of the year 1907, authorized and empowered, in connection with the board of control of said State prison at Jackson to purchase the necessary machinery for the equipment of a twine and cordage plant in said prison and then and there was empowered to act, vote, judge and decide on the matter of said purchase in his, the said Allen N. Armstrong's, official capacity as warden of said prison as aforesaid.

- 10 and one Milton Daily, late of the city of Chicago, State of Illinois, then and there being interested as a bidder for the equipment of said plant and the furnishing of machinery therefor, both in his, the said Milton Daily's, individual capacity, and as sales agent for the Hoover & Gamble Company, a corporation of the State of Ohio, located at Miamisburg, Ohio, and having theretofore entered into a contract with the said State of Michigan, acting through the said Allen N. Armstrong as warden and the board of control of the Michigan State Prison for the sale by the said Hoover & Gamble Company to the said State of Michigan of certain machinery and equipment for the said twine and cordage plant, under which contract said Hoover & Gamble Company had agreed and were bound to furnish such new machinery for use therein as in said contract provided, and said Milton Daily having theretofore corruptly agreed with said Allen N. Armstrong, as such warden, that in place of such new machinery, so contracted to be furnished by said Hoover & Gamble Company, certain second hand, used and worn machinery, previously to and at that time owned by the said Milton Daily, should be fraudulently substituted for such new machinery so contracted to be furnished by said Hoover & Gamble Company, and said worn, used, and second-hand machinery, having been prior to said date so substituted with the knowledge and consent of said Allen N. Armstrong under such corrupt
- 11 agreement with said Milton Daily, the said Milton Daily then and there, well knowing the premises and the official capacity in which said Allen N. Armstrong was then and there acting and the authority and power of the said Allen N. Armstrong in the premises, did, on to wit: the 13th day of May, 1908, at the city of Jackson, in said county of Jackson, corruptly give to the said Allen N. Armstrong, then and there acting as such executive officer, as aforesaid, a gift of gratuity, to wit: Fifteen hundred dollars of the lawful money of the United States with the intent then and there to influence said Allen N. Armstrong in his action as said warden of the State prison as aforesaid to acquiesce in and agree to the said fraudulent substitution of said used, worn, and second-hand machinery and to refrain and abstain from communicating to the proper officers of said State and said board of control the fact of such substitution and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of the moneys prior to that time had and received from said State of Michigan as the purchase price of said machinery and the equipment so fraudulently delivered under said contract, all of which said acts were in violation of his duty as warden of said State prison as aforesaid, contrary to the form of the statute in such case made and provided
- 12 and against the peace and dignity of the People of the State of Michigan.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit: on the first day of June, 1907, and from thence hitherto one Allen N. Armstrong was an executive

officer of the said State of Michigan, to wit: warden of the Michigan State Prison at Jackson in said State and was duly appointed, qualified and acting as such warden and was then and there, under the provision of act number two hundred and eleven of the Public Acts of the year 1907, authorized and empowered, in connection with the board of control of said state prison at Jackson, to purchase for said State of Michigan the necessary machinery for the equipment of a twine and cordage plant in said prison and was then and there by said act empowered and authorized to act, vote and decide in his, the said Allen N. Armstrong's official capacity as warden of said State prison as aforesaid on the mater of such purchase, its kind and character, and the acceptance of *binds* for the furnishing and sale to the State of Michigan of such machinery, and one Milton Daily, late of the city of Chicago, State of Illinois, then and there being interested as a bidder for the furnishing and sale of such equipment of said plant to said State of Michigan and the furnishing of machinery therefor, both in his, the said Milton Daily's, individual capacity as sales agent for the Hoover & Gamble Company, a corporation of the State of Ohio, located at Miamisburg, Ohio, said Milton Daily being desirous of entering into a contract with said State of Michigan acting through the said Allen N. Armstrong as warden and the board of control of the Michigan Prison, for the sale by said Hoover & Gamble Company and said Milton Daily to the said State of Michigan of certain machinery and equipment for the said twine and cordage plant, and then and there knowing that said board of control desired and intended to purchase new machinery for the equipment of said twine and cordage plant and that said board did not desire or intend to contract for or purchase used, worn and second-hand machinery therefor, the said Milton Daily, well knowing the premises and that the action, vote, judgment and decision of said Allen N. Armstrong, in his official capacity as warden of said prison as aforesaid, was, under authority of law, essential to the completion of said purchase, and well knowing that said board of control did not desire or intend to purchase said second-hand, used and worn machinery, did, on to wit: the 22nd day of July, 1907, by corrupt and fraudulent agreement with the said Allen N. Armstrong, submit to the said board of control and said Allen N. Armstrong, as warden, a certain bid and offer in writing to sell to said State of Michigan certain machinery at a certain specified price therefor, to wit: twenty-nine thousand six hundred and eighty dollars, said offer containing the provision

- 13 that said machinery should be all new machinery, and having then and there by corrupt agreement with said Allen N. Armstrong induced the said Allen N. Armstrong to consent to substitute for certain of said new machines so agreed to be furnished certain other worn, used and second-hand machinery of like description, to wit: one coarse breaker, one special breaker and spreader, one regular spreader, three drawing frames, coarse, medium and fine, two finishing drawing frames, four two-single balling machines, one layer or tie cord machine, one tow picker, twenty-eight
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double flyer spinners, two geared spinners, and one tow card, which said second-hand, used and worn machinery it was corruptly agreed should be furnished by said Milton Daily in place and stead of the new machinery so described above in said bid and offer, and having through such corrupt agreement with said Allen N. Armstrong secured the acceptance of said second-hand, used and worn machinery by said Armstrong and said board of control, said board being in ignorance of such proposed substitution of said second-hand, used and worn machinery for such new machinery, and said Milton Daily, acting through and in conjunction with said Hoover & Gamble Company, having thereafter furnished to the said State of Michigan and to said Allen N. Armstrong as Warden of said State Prison, and installed in said twine and cordage plant such second-hand, worn and used machinery, through and in conjunction with said Hoover & Gamble Company, and having received therefor full payment from said State of Michigan at the prices fixed in said contract for said machinery as new said Milton Daily, well knowing the premises, did thereafter, to wit: on the 13th day of May, 1908, at the city of Jackson in said county of Jackson, corruptly give

15 to the said Allen N. Armstrong, then and there acting as such executive officer and warden, as aforesaid, a gift or gratuity, to wit: fifteen hundred dollars of lawful money of the United States, with the intent then and there to influence said Allen N. Armstrong in his action in his official capacity as warden of said State prison as aforesaid to continue his consent to the furnishing and acceptance of said second-hand, used and worn machinery so substituted as aforesaid, as a compliance with said contract, and to refrain and abstain from communicating to the proper officers of said State or to said board of control the fact of such substitution and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of the moneys so received by them and each of them from said State of Michigan as the purchase price of said machinery and equipment so contracted to be furnished by the said Milton Daily and said Hoover & Gamble Company in accordance with the bid and offer and contract before set forth, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit: on the 13th day of May, 1908, one Allen N. Armstrong, then and there being an executive officer of said State of Michigan, to-wit: Warden of the Michigan State Prison at Jackson in said State, duly appointed, qualified and acting in that capacity, and then and there being charged, empowered and authorized by law to purchase, in conjunction with the board of control of the said state prison, certain machinery and equipment for the twine and cordage plant at said state prison, duly authorized and

16 established by law, and then and there being charged with the duty of accepting the machinery so purchased and installed,

and having theretofore fraudulently and corruptly accepted certain machinery sold to said State of Michigan by one Milton Daily, late of the City of Chicago, State of Illinois, which said machinery was not in accordance with the offer and bid of said Milton Daily, previously made to said Allen N. Armstrong, as such warden, and said board of control, and the contract therefor executed in accordance with said offer and bid, said contract having been made with the Hoover & Gamble Company, a corporation organized under the laws of the State of Ohio and having its principal office at Miamisburg, Ohio, but purporting to be made in accordance with and for the purpose of carrying out the bid and offer of said Milton Daily, said machinery so accepted not being in compliance with the said bid so submitted nor with the contract so made as aforesaid, and the moneys had and received as the purchase price for said machinery under said bid and said contract having been fraudulently and corruptly received and taken by said Milton Daily and said Hoover & Gamble Company, and the fraud and corruption with respect thereto being unknown to said Board of control of said State prison and to said State of Michigan and the people thereof, all of which said premises were well known to the said Milton Daily, he, the said Milton Daily,

17 did, on the date aforesaid, at the city of Jackson in said county, corruptly give to the said Allen N. Armstrong, a gift or gratuity, to wit: the sum of fifteen hundred dollars of lawful money of the United States with intent then and there to influence the act, vote, opinion, decision and judgment of the said Allen N. Armstrong, then and there acting in his official capacity as warden of said state prison, and in violation of his duty in the premises to permit the said Hoover & Gamble Company and the said Milton Daily to retain the purchase price of the machinery so corruptly furnished and the moneys so fraudulently and corruptly received by them and to refrain and abstain from demanding the fulfillment of said contract by the said Milton Daily and the said Hoover & Gamble Company by the furnishing and installation of the new machinery required by said bid and offer and by the terms of said contract, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

Fourth Count.

The grand jurors aforesaid, upon their oath aforesaid, do further present that:

Heretofore, to wit: on the first day of June, 1907, and from thence hitherto one Allen N. Armstrong was an executive officer of
18 said State of Michigan, to wit: warden of the Michigan State Prison at Jackson, in the city of Jackson, in said State, and was duly appointed, qualified and acting as such warden of said prison.

That thereafter and heretofore, to wit: on the 24th day of June, 1907, Act two hundred and eleven of the Public Acts of the State of Michigan for the year 1907, entitled

"An Act to provide for the installation, maintenance, equipment and operation of a twine and cordage plant to be operated by prison labor at the State Prison at Jackson, Michigan, to provide for the sale and disposition of the manufactured product; to define the duties of the warden and board of control of said prison in relation thereto; to make an appropriation for the fiscal year ending June thirty, nineteen hundred eight, to carry into effect the object and purposes of this bill and to provide a tax to meet the same."

took effect and became a law of said State, which said act empowered, authorized and directed the said Allen N. Armstrong, as warden of the Michigan State Prison at Jackson and the board of control of said Michigan state prison at Jackson, for and in behalf of said State of

19 Michigan, to install, maintain, equip and operate a twine and cordage plant at said Michigan State prison and to purchase the necessary machinery for the manufacture of twine and cordage at said prison, the said Allen N. Armstrong, as said warden, then and there being authorized and empowered to act, vote and decide in his, the said Allen N. Armstrong's official capacity as said warden as aforesaid, in the matter of such purchase, the kind and character, and the acceptance of bids for the furnishing and sale to the said State of Michigan of such machinery for the manufacture of twine and cordage, all of which said matters and things were required by law to come before the said Allen N. Armstrong as said warden in his official capacity.

That thereafter and heretofore to wit: on the 19th day of July, 1907, one Milton Daily, late of the city of Chicago, State of Illinois, then and there being interested as a bidder for the equipment of said twine and cordage plant and the furnishing of the necessary machinery therefor, both in his, the said Milton Daily's, individual capacity and also as sales agent for the Hoover & Gamble Company, a corporation organized and existing under the laws of the State of Ohio, with its principal office located at Miamisburg, Ohio, submitted in writing his, the said Milton Daily's, bid for all new machinery necessary for the said equipment of said twine and cordage plant to the said Allen N. Armstrong as said warden of the

20 Michigan state prison at Jackson in his official capacity as such warden, which said bid of the said Milton — was in words and figures as follows:

"CHICAGO, ILL., July 19th, 1907.

Mr. A. N. Armstrong, Warden, Jackson, Mich.

DEAR SIR: Complying with your request to quote on 120 spindle twine system, all new machinery to be manufactured by the Hoover and Gamble Company, I herewith submit as per their prices to me, the following:

1 #1 Breaker	\$1200.00
1 #2 Breaker	1200.00
1 Special Breaker and Spreader	1150.00
2 Spreaders (Regular) at \$1050 each	2100.00
3 Drawing Frames Coarse, Medium & Fine at \$550 each	1650.00

3 Finishers' Frames Coarse, Medium & Fine at \$550 each	1650.00
60 Double Flyer Spinning Jennies at \$260 each.....	15600.00
1 Duster and Cleaner	350.00
1 Tow Picker	400.00
1 Tow Card	950.00

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1 Tensile Strength Testing Machine.....	110.00
1 Twine Reel	75.00
3 Bell Ringers at \$25 each.....	75.00
7 Balling Machines of 2 Spindles, 3 or 3 Spindles....	1745.00
1 24 Thread Rope Machine.....	850.00

29105.00

Yours very truly,

MILTON DAILY.

Terms, Cash for each shipment upon receipt of bill and B/L until 75% is paid for, balance of 25% when machinery is put in operation and fulfills warranty. Time to complete six months."

That thereafter and heretofore, to wit: on the 22nd day of July, 1907, the said bid of the said Milton Daily was duly considered and accepted by the said Allen N. Armstrong as said warden of the Michigan State prison at Jackson and the board of control of said Michigan state prison, for and in behalf of said State of Michigan, and on the said 22nd day of July, 1907, an agreement in writing was made and entered into by and between the board of control of the Michigan state prison at Jackson for and in behalf of said State of Michigan, and the Hoover & Gamble Company, a corporation as aforesaid, pursuant to the said bid of the said Milton Daily,

22 which agreement was in words and figures as follows:

"This Agreement made and entered into this 22nd day of July, A. D. 1907, by and between the Board of Control of the Michigan State Prison at Jackson, Mich. party of the first part, and the Hoover and Gamble Company, a corporation organized under the laws of the State of Ohio whose principal office is located at the city of Miamisburg, Ohio, party of the second part, Witnesseth.

First. Whereas the said party of the first part did on the 9th day of July, A. D. 1907, invite bids for furnishing the machinery necessary for manufacturing twine, and

Whereas in pursuance of said request prices were received and considered by the said party of the first part on the 22nd day of July, A. D. 1907, and it was found that the said party of the second part presented the low bid, as contained in a letter from their General Sales Agent, Milton Daily of Chicago to Allen N. Armstrong under date of July 19, 1907, which letter is hereto attached and made a part of this contract; now therefore

Second. It is mutually agreed by and between the parties hereto

23 that the said party of the second part shall furnish to said party of the first part the following named machines at the times and in the manner and under the conditions herein-after prescribed, to wit.

- 1 No. 1 Breaker.
- 1 No. 2 Breaker.
- 1 Special Breaker and Spreader.
- 2 Spreaders (Regular).
- 4 Drawing Frames.
- 3 Finishers.
- 60 Double Flyer Spinning Jennies.
- 1 Duster and Cleaner.
- 1 Tow Picker.
- 1 Tow Card.
- 1 Tensile Strength Testing Machine.
- 1 Twine Reel.
- 4 Bell Ringers.
- 4 Balling machines, 2 spindle.
- 3 Balling machines, 3 spindle.
- 1 24 Thread Rope machine.

Third. It is further mutually agreed by and between the parties hereto that the aforesaid machinery shall be delivered f. o. b. cars at Miamisburg, Ohio, on or before the 22nd day of January, 24 1908, by the said party of the second part, unless prevented by fires or labor strikes; also that the said party of the second part shall furnish a competent man to superintend the installation and erection of the said machinery and to put the same in operation in a perfect and satisfactory manner.

Fourth. It is further mutually agreed by and between the parties hereto that the said party of the second part guarantees the machinery above mentioned to be a complete plant for the manufacture of binder twine and capable of producing 9500 lbs. of mercantile binder twine in a working day of eight hours with a sufficient force of operatives. Also that the said party of the second part guarantees that all the machinery above mentioned shall be constructed in a thorough manner free from any defects of materials or workmanship and finished in a first class manner, also that it shall be of the latest approved patterns.

Fifth. It is further mutually agreed by and between the parties hereto that if the machinery mentioned above shall not be furnished and delivered on or before the 22nd day of January 1908 the said party of the second part shall for each and every day that shall elapse after the said 22nd day of January, 1908 until the delivery of said machinery pay to the said party of the first part as and for liquidated damages the sum of forty dollars over and above all costs and expenses to which the said party of the first part may be put by reason of such delay.

Sixth. It is further mutually agreed by and between the parties hereto that in consideration of the performance by the party of the second part of the covenants and agreements herein contained the party of the first part shall pay to the party of the second part the sum of twenty-nine thousand six hundred and eighty dollars

(\$29,680.00) as follows: Full payment shall be made upon receipt of each bill of lading for the machinery shown on such bill until 75% of the total amount shall have been paid. The remaining 25% shall then be retained until the machinery is all installed and tested, and operating, so as to fulfill the guaranty above given, to the satisfaction and approval of C. G. Wrentmore Cons. Engr. of the Board of Control.

Seventh. It is further mutually agreed that this contract shall become valid and operative only upon the execution by the
26 said party of the second part and delivery to the said party of the first part of a surety bond in the sum of ten thousand dollars pursuant to the provision of Act 187 of the Public Acts of the State of Michigan for the year 1905, and of a like bond for a like sum for the faithful performance of this contract and to indemnify said first party against any and all suits for damages resulting from infringements of patents.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THOMAS J. NAVIN,	[L. S.]
TIMOTHY C. QUINN,	[L. S.]
GEO. W. MERRIMAN,	[L. S.]

*Constituting the Board of Control
of the Michigan State Prison.*

THE HOOVER & GAMBLE CO.
A. G. EMINGER, *Sec'y & Treas.*

In presence of

ELSIE MILLS."

That on to wit: the said 19th day of July, 1907, the said Milton Daily, being then and there the owner of, or then and there having under his supervision and control, certain second-hand, used
27 and worn machinery for the *machinery for the manufacture* of twine and cordage, to-wit: one coarse breaker, one special breaker and spreader, one regular spreader, three drawing frames, coarse, medium and fine, two finishing drawing frames, four two spindle balling machines, one layer or tie cord machine, one tow picker, twenty eight double flyer spinners, two geared spinners, and one tow card, which said second-hand, used and worn machinery for the manufacture of twine and cordage, he, the said Milton Daily, was endeavoring to fraudulently substitute for and in the place of an equal amount and kind of new machinery in the carrying out of the terms and conditions of said contract between the said State of Michigan and the said Hoover & Gamble Company, entered into a corrupt agreement with the said Allen N. Armstrong as said warden of the Michigan State prison to permit the said Milton Daily to fraudulently substitute for and in place of an equal amount and kind of new machinery provided for in said contract between the said State of Michigan and the said Hoover & Gamble Company, said second hand, used and worn machinery for the manufacture of twine and cordage then and there owned by the said Milton Daily or then and there under the supervision and control of the said Milton Daily as afore-

said, and whereby he, the said Allen N. Armstrong, was to refrain and abstain from communicating to the proper officers of said State or to said Board of control of the Michigan state prison at Jackson the fact of such substitution and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of all moneys received under or by reason of said contract between the said State of Michigan and said Hoover & Gamble Company as the purchase price of said machinery and equipment so fraudulently delivered or to be delivered under said contract to said State of Michigan.

And the said Milton Daily and the said Hoover & Gamble Company, having thereafter furnished and delivered to the said State of Michigan in accordance with the said corrupt agreement so as aforesaid made between said Milton Daily and the said Allen N. Armstrong, such second-hand, used and worn machinery which said contract provided should be sold and delivered by said Hoover & Gamble Company to the said State of Michigan, and said Milton Daily and the said Hoover & Gamble Company having received therefor from said State of Michigan the following purchase price provided in said contract for said new machinery, to wit: the sum of twenty-nine thousand six hundred and eighty dollars, he, the said Milton Daily,

for the purpose of completing, consummating and carrying out his, the said Milton Daily's corrupt agreement with the said Allen N. Armstrong, did thereafter, on to wit: the 13th day of May, 1908, corruptly give to the said Allen N. Armstrong at the city of Jackson, in the county of Jackson, a gift or gratuity, to wit: the sum of fifteen hundred dollars of the lawful money of the United States with intent then and there to influence the act, vote, opinion, decision and judgment of the said Allen N. Armstrong in the matter of the purchase of machinery for the manufacture of twine and cordage as aforesaid, the same being a matter required by law to come before said Allen N. Armstrong, as such warden in his official capacity, and to induce said Allen N. Armstrong then and there acting in his official capacity as warden of said state prison, and in violation of his lawful duty as such warden, to continue his consent to the non-performance of said contract and the acceptance of said second-hand, used and worn machinery, so substituted as aforesaid, as a sufficient compliance with said contract, and to refrain and abstain from communicating to the proper officers of said State or to the said board of control the fact of such substitution, and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of the moneys so received by them and each of them from said State Michigan as the purchase price of said machinery and equipment so contracted to be furnished by the said Milton Daily to the said Hoover & Gamble Company in accordance with the contract before set forth, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

ALBERT O. REECE,

Prosecuting Attorney.

(Endorsements:) State of Michigan The Circuit Court for the County of Jackson. People of State of Michigan, Complainant vs. Milton Daily, Defendant. Indictment. A True Bill. John W. Boardman, Foreman. Albert O. Reece, Prosecuting Attorney. Filed May 1, 1909. Geo. H. Townsend, Clerk. People's witnesses: Allen N. Armstrong, John C. Wenger, Aaron Wenger, John B. Brewerm Richard Meyers, R. S. Neeley, George R. Stone, Albert H. Pickett, Clarence G. Wrentmore, Henry C. Anderson, John R. Allen, Thomas J. Navin, George W. Merriman, Timothy C. Quinn, Fred M. Warner, Fred H. Helmer, Frank H. Newkirk, Martha Armstrong, Richard O. Morgan, Katherine Morgan, Will G. Cooper. John E. Bryers, Bernhardt Meyer, William R. Bates.

31 And your petitioner further shows that said "Indictment Exhibit B" is in the words and figures following, to wit:

32 "INDICTMENT EXHIBIT B."

STATE OF MICHIGAN,
County of Jackson, ss:

The Circuit Court for the County of Jackson, at the March Term,
A. D. 1909.

The grand jurors of the said State of Michigan, in and for said County of Jackson, and inquiring in and for the body of said County, upon their oath, do present that:

Heretofore, to wit: on the first day of May, A. D. 1908, Allen N. Armstrong, Milton Daily and Andrew J. Eminger, at the city of Jackson, in the County of Jackson and State of Michigan, did, with intent to defraud and cheat the State of Michigan and the people thereof, knowingly and designedly falsely pretend that certain machinery for the manufacture of binding twine and cordage then and there installed by the Hoover & Gamble Company, a corporation existing under the laws of the State of Ohio, in the twine and cordage plant of the State of Michigan in the state prison at said city of Jackson, in said county, was new and unused and that the same complied with the requirements of a certain contract theretofore made by said Hoover & Gamble Company with the Board of Control of the state prison at Jackson in behalf of said State of Michigan therein; whereas, in truth and in fact, said machinery was not new, but was second hand, used and worn machinery, the said State of Michigan and the people thereof and the Board of Control of said prison being deceived thereby; and by means of said false and fraudulent pretences said Milton Daily, Allen N. Armstrong and Andrew J. Eminger did then and there, well knowing the premises and with the intent to cheat and defraud the State of Michigan and the people thereof, obtain of and from said State of Michigan a certain sum of money, to wit: ten thousand dollars of lawful money of the United States, contrary to the form of the statute in such case

made and provided and against the peace and dignity of the People of the State of Michigan.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that:

Heretofore and to wit on or about the first day of July 1907, one Allen N. Armstrong, warden of said prison, and the board of control of said Michigan state prison, were duly authorized by law to purchase, in behalf of said state of Michigan, certain machinery for the

34 manufacture of twine and cordage to be installed in the twine and cordage plant of the said State of Michigan at the state prison in the city of Jackson in said county, and the said

Allen N. Armstrong, as warden, was then and there duly authorized to pay from the funds of said State of Michigan for the machinery so purchased under such authority, and the said Board of Control, acting under such authority, having determined to purchase therefor new machinery and having rejected a bid or offer of the said Hoover & Gamble Company, made through said Milton Daily as agent and Andrew J. Eminger, Secretary of said company, for the furnishing of second-hand, worn and used machinery therefor, and having contracted with the said Hoover & Gamble Company for the furnishing of all new machinery for the manufacture of such twine and cordage in said plant of said State of Michigan as aforesaid, the said Allen N. Armstrong, Milton Daily, late of the city of Chicago, State of Illinois, and Andrew J. Eminger, late of the city of Miamisburg, State of Ohio, well knowing the premises, with intent to defraud and cheat the State of Michigan thereby, did, on to wit, the first day of May, 1908, falsely and fraudulently pretend that the machinery so furnished and installed under said contract by said Hoover & Gamble Company was new machinery as required by said contract, whereas, in truth and in fact, a portion of said machinery, to wit: one coarse

35 breaker, one special breaker and spreader, one regular spreader, three drawing frames coarse, medium & fine, two finishing drawing *drawing* frames, four two spindle belling machines, one layer or tie cord machine, one tow picker, twenty-eight double flyer spinners, two geared spinners and one tow card, was second-hand, used and worn machinery which had theretofore been installed and used to the knowledge of all of said defendants in a twine and cordage plant at Ayton, in the province of Ontario, Dominion of Canada, with intent to defraud said State of Michigan, and the people thereof, and by means of said false and fraudulent pretenses did then and there with such intent obtain from said State of Michigan certain money, to wit: ten thousand dollars of lawful money of the United States, said State of Michigan and the people thereof and the said Board of Control of said prison relying on said false pretenses as true and being deceived thereby, contrary to the form of the statute in such case made and provided and against the peace and dignity of the people of the State of Michigan.

Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

Heretofore, and on, to wit, the first day of May, 1907, one Allen N. Armstrong was warden of the Michigan State prison at the city of Jackson in said county, and under the laws of said state was, in conjunction with the Board of Control of said prison, duly authorized and empowered to purchase for and in behalf of said State of Michigan certain machinery for the manufacture of twine and cordage to be used in the installation, maintenance, equipment and operation of a twine and cordage plant for said state at the said state prison, and the said Allen N. Armstrong, as such warden, was then and there duly authorized to accept machinery so purchased and to pay therefor from the funds of said state of Michigan under his control under the laws of said state; and thereafter the said Board of Control and the said Allen N. Armstrong, as such warden, contracted with the Hoover & Gamble Company acting through Milton Daily, the agent, and Andrew J. Eminger, the secretary of said company, for the purchase of certain machinery to be used in the installation, maintenance, equipment and operation of said twine and cordage plant for said state, all of which, in accordance with the terms of said contract, was to be new machinery; that, before the making of said contract, said Allen N. Armstrong, conspiring with Milton Daily and Andrew J. Eminger, had corruptly agreed to substitute for the machinery so contracted to be sold to said State of Michigan for said plant as aforesaid certain old, worn and second-hand machinery of less value than the machinery so contracted to be sold, the said board of control of the state prison at Jackson being ignorant of such conspiracy and such intended substitution of worn, second-hand and used machinery for the new machinery required by said contract to be furnished, and being deceived and defrauded by said substitution, and the said machinery so contracted for not being furnished as provided in said contract, but in place and stead of a portion thereof, said used, second-hand and worn machinery having been theretofore delivered and installed in said twine and cordage plant of said State, said Allen N. Armstrong, Milton Daily and Andrew J. Eminger, well knowing the premises and with intent to defraud and cheat the state of Michigan, did, to wit, on the first day of May, 1908, at Jackson in said county falsely and fraudulently pretend that the machinery so furnished and installed under said contract was the new machinery required thereby to be furnished and did render bills for such old, worn and second-hand machinery as new machinery at the prices stipulated therefor in said contract, which bills were then and there duly audited and allowed by said Allen N. Armstrong and said machinery then and there paid for as new machinery, and the said Allen N. Armstrong, Milton Daily and Andrew J. Eminger did then and there obtain and receive from said state of Michigan, by means of the false and fraudulent pretenses so as aforesaid set up, certain money, to wit, ten thousand dollars lawful money of the United

States, the said State of Michigan and the people thereof and said board of control then and there relying upon such false and fraudulent pretenses as true and being deceived thereby, contrary to the form of the statute in such case made and provided and against the peace and dignity of the people of the state of Michigan.

ALBERT C. REESE,
Prosecuting Attorney.

And your petitioner further shows that the said indictments were returned into said Circuit Court for the County of Jackson in the State of Michigan on the first day of May in the year 1909.

And your petitioner further shows, that the only evidence set forth in said papers concerning your petitioner's presence in the State of Michigan at any time, and that the only evidence produced before or presented to said Governor of the State of Illinois concerning your petitioner's presence in the State of Michigan at any time, consists of statements made in two papers which accompanied said requisition, which papers purport to be affidavits made by said Jacob F. Strobel and said Allen N. Armstrong, respectively, which papers are hereinafter referred to and designated "Strobel's Affidavit" and "Armstrong's Affidavit," respectively; that said Strobel's affidavit is in the words and figures following, to wit:

39

Strobel's Affidavit.

STATE OF MICHIGAN,
County of Jackson, ss:

Jacob F. Strobel, being first duly sworn, says that he is Under Sheriff of the county of Jackson in said State of Michigan, and that in his capacity as such officer he has in his hands for execution a criminal warrant for Milton Dailey, on the charge of bribery, and a criminal warrant for Milton Dailey, Andrew J. Eminger and Allen N. Armstrong, on the charge of obtaining ten thousand dollars in money from the State of Michigan by means of false pretenses.

This deponent further says, that he has been creditably informed by the Police Department of the city of Chicago in the State of Illinois that the said Milton Dailey is under arrest in the said city of Chicago, and is in the State of Illinois at this time.

Deponent further says, that he believes the said Milton Dailey to be in the State of Illinois a fugitive from justice.

JACOB F. STROBEL.

Subscribed and sworn to before me this 19th day of May, 1909.

CASSIUS M. JENKS,
Police Judge.

40

That said Armstrong's affidavit is in the words and figures following, to wit:

41

Armstrong's Affidavit.

STATE OF MICHIGAN,

County of Jackson, ss:

Allen N. Armstrong being duly sworn deposes and says that on or about the first day of February, 1903, he was duly appointed Warden of the Michigan State Prison, located at the city of Jackson, in said county of Jackson, and immediately thereafter duly qualified and entered upon the discharge of the duties of said office, which he continued to hold and occupy until on or about the first day of February, 1909, and at the regular session of the Legislature of the State of Michigan for the year 1907 act No. 211 of the Public Acts of said state was passed and given immediate effect and approved by the Governor under date of June 24th, 1907, which act empowered, authorized and directed the warden and board of control of the Michigan State Prison at Jackson, at a cost of not to exceed fifty thousand dollars, to use, purchase, erect, equip and maintain the buildings, to use, boilers and equipment necessary for the manufacture of twine and cordage, together with the warehouse to be used in connection with said twine and cordage plant, and which said act

42 appropriated the sum of one hundred and seventy five thousand dollars for the purpose of said act, fifty thousand dollars being appropriated for the purpose of purchasing, erecting and equipping the necessary buildings, machinery, boilers and equipment to be used therein. That acting pursuant to said act the warden and board of control of said prison called for bids for the equipment of 120 spinner plant for the manufacture of twine and cordage at said prison, together with the necessary preparing machines; that bids were duly furnished by the Watson Manufacturing Company of Paterson, New Jersey, and also by the Hoover & Gamble Company of Miamisburg, Ohio, through its sales agent Milton Daily of Chicago, Illinois. The original bid for all new machinery of the said Hoover & Gamble Company being twenty-nine thousand eight hundred and five dollars, and for a part new and part used machinery twenty-eight thousand and fifteen dollars. That prior to the 22nd day of July, the said Milton Daily appeared before this deponent as warden of the Michigan State Prison and the board of control of said prison at various meetings held for the purpose of considering the purchase of such machinery at the city of Jackson, in said county of Jackson, and at the city of Detroit, in said State of Michigan. That it was finally determined by the

43 warden and board of control of said prison that it was advisable to purchase all new machinery, and the said Milton Daily as sales agent for the said Hoover & Gamble Company was requested to make a new bid for all new machinery, which he did under date of July 19, 1907, as set forth in the certified copy of indictment hereto attached. That the said bid of the said Milton Daily under date of July 19, 1907, was duly accepted by the warden and board of control of said prison, with the addition of one drawing frame at \$550.00, and one bell ringer at \$25, making a total con-

tract price the sum of \$29,680.00. and under date of July 22, 1907, the contract was duly entered into between the Board of Control of the Michigan State Prison at Jackson and Hoover & Gamble Company of Miamisburg, Ohio, for the purchase of such new machinery in the manner set forth in the certified copy of indictment hereto attached. That this deponent learned from the said Milton Daily that some three or four years prior to the making of said contract the said Hoover & Gamble Company through its said sales agent Milton Daily had installed at Ayton, Canada, a 60 spinner plant for the manufacture of twine and cordage; that said plant has been operated for only about 45 days, which said machinery the said Milton Daily had recently acquired by purchase. That a few days prior to

44 the acceptance of the said bid of the said Milton Daily, as above set forth, the said Milton Daily informed this deponent that he and the board of control of the Michigan State Prison at Jackson were making a mistake in purchasing all new machinery, as the said Ayton machinery owned by said Milton Daily was practically as good as new, and that if this deponent would permit the said Milton Daily to substitute said Ayton machinery for an equal amount of new machinery, in the event a contract was made for the purchase of new machinery for the manufacture of twine and cordage at said prison, he the said Milton Daily would make this deponent a present of at least one thousand dollars and possibly more. That after said contract was made the said Milton Daily did substitute such second hand machinery for a like quantity of new machinery, and appeared at various times at the city of Jackson while the same was being installed and after it was installed. It was understood and agreed between this deponent and the said Milton Daily that this deponent was to refrain and abstain from communicating to the proper officer of the State of Michigan or to the Board of Control the fact of such substitution and to permit the said Hoover & Gamble Company and the said Milton Daily to retain the purchase price therefor. That said plant for the manufacture of twine and

45 cordage commenced operations about the 17 day of March, 1908, and the contract price paid in full to said Hoover & Gamble Company. That thereafter and on or about the 13 day of May, 1908, the said Milton Daily as he had prior thereto agreed to do paid this deponent the sum of fifteen hundred dollars.

And further deponent says not.

ALLEN N. ARMSTRONG.

Subscribed and sworn to before me this 19th day of May, A. D. 1909.

CASSIUS M. JENKS.

Police Judge, Jackson, Michigan.

46 And your petitioner further shows that in every count of said "Indictment Exhibit A." it is stated that your petitioner, Milton Daily, did, on the thirteenth day of May, in the year 1908, at the city of Jackson, in the county of Jackson and in the State of Michigan, give to said Allen N. Armstrong fifteen hundred dollars,

with the intent to influence and induce said Allen N. Armstrong, in his capacity as Warden of a Michigan State prison, in the State of Michigan, to do or to refrain and abstain from doing a certain act or certain acts, alleged to be in violation of his, (said Allen N. Armstrong's) duty as said Warden; and that in every count of said "Indictment Exhibit B," it is stated that your petitioner, Milton Daily, on the first day of May in the year 1908, made certain false representations, and obtained, on said first day of May in the year 1908, from the State of Michigan and the people of the State of Michigan, by means of said false representations, the sum of ten thousand dollars; and that in one count of said "Indictment Exhibit B" it is stated that said false representations were made at said City of Jackson in said County of Jackson and said State of Michigan.

And as your petitioner further shows that he, your petitioner, was not in the State of Michigan on the first day of May in the year 1908, or on any day or about said first day of May in the year 1908, or on the thirteenth day of May in the year 1908, or on any day on or about said thirteenth day of May in the year 1908, and that he, your petitioner, was not in the State of Michigan on the nineteenth, twentieth, or twenty-first day of July in the year 1907, and that he your petitioner, was not in the State of Michigan at any time whatever between the seventh day of April in the year 1908 and the twenty-third day of June in the year 1909, and that he, your petitioner, was in the State of Michigan on the twenty-second day of July in the year 1907, and on the fourteenth day of November in the year 1907, and on the sixth and seventh days of April in the year 1908, and that he, your petitioner, was not in the State of Michigan on any day between said twenty-second day of July in the year 1907 and said sixth and seventh days of April in the year 1908, except on said fourteenth day of November in the year 1907.

And your petitioner further shows that he, your petitioner, was not in the State of Michigan at the time when, if ever, said crime of bribery was committed, or at the time when, if ever, said crime of obtaining money by false pretences was committed, or at the time when, if ever, said sum of fifteen hundred dollars was given said Allen N. Armstrong, as it is alleged in said "Indictment Exhibit A," or at the time when, if ever, the alleged false representations and pretenses, specified in said "Indictment Exhibit B" were made, or at the time when, if ever, said sum of ten thousand dollars were obtained from the people of the State of Michigan by false pretenses, as it is alleged in said "Indictment Exhibit A," or at the time when, if ever, any of the corrupt agreements or understandings, alleged in either of said indictments or stated in said Armstrong's affidavit, were entered into or made, or at the time or times when, if ever, anything was said or done in furtherance of or concerning any of said corrupt agreements or understandings, or at the time when, if ever, your petitioner, as it is stated in said Armstrong's affidavit, informed "this deponent" (meaning said Allen N. Armstrong) "that he" (meaning said Allen N. Armstrong) "and the Board of Con-

trol of the Michigan State Prison at Jackson, were making a mistake in purchasing all new machinery as the Ayton machinery owned by said Milton Daily" (meaning your petitioner) "was practically as good as new, and that if this deponent" (meaning said Allen N. Armstrong) "would permit said Milton Daily (meaning your petitioner) "to substitute said Ayton machinery for an equal amount of new machinery, in the event a contract was made for the purchase of new machinery for the manufacture of twine and cordage at said prison, he, the said Milton Daily" (meaning your petitioner) "would make this deponent" (meaning said Allen N. Armstrong) "a present of at least one thousand dollars, and possibly more."

49 And your petitioner further shows that he, your petitioner, did not, at said City of Jackson, in said County of Jackson in said State of Michigan, or at any other place in the State of Michigan, on said thirteenth day of May in the year 1908, or on any other day in the year 1908, or at any other time, give said Allen N. Armstrong the sum of fifteen hundred dollars, or any other sum of money, or any other thing, and that he, your petitioner, did not, at said City of Jackson, in said County of Jackson, in said State of Michigan, or at any other place in the State of Michigan, on the first day of May in the year 1908, or on any other day in said year 1908, or at any other time, orally or in writing or by any act or any conduct of him, said Milton Daily, either alone or in co-operation with any other person or persons, make any one or more or all of the supposed false representations, alleged in said "Indict-

50 ment Exhibit B;" and that your petitioner, Milton Daily, did not at said city of Jackson, in said County of Jackson, in said State of Michigan, or at any other place in the State of Michigan, on said first day of May in the year 1908, or on any other day in the year 1908, or at any other time, either alone or in co-operation with any other person or persons, obtain from the State of Michigan, by said supposed false representations, or by any false representations, the sum of ten thousand dollars, or any other sum of money, or any other thing.

And your petitioner further shows that he, your petitioner, did not, on the nineteenth or the twenty-second day of July, or on the fourteenth day of November, in the year 1907, or on the first or on the thirteenth day of May, or on the sixth or seventh day of April, in the year 1908, or at any other time, in the State of Michigan or elsewhere have any conversation, or communication, or understanding, with said Allen N. Armstrong about or concerning the substitution of old, used or worn machinery for new machinery, or for such machinery as was contracted for in said contract set out in said "Indictment Exhibit A" and dated July twenty-second, 1907, or about or concerning any old, used or worn machinery which had been substituted, as it is alleged in said indictments, for new machinery, or for such machinery as was contracted for in said contract, and that he, your petitioner, did not, in the State of Michigan, or elsewhere, at any time, say to or in any way whatever inform said Allen N. Armstrong that he, said Allen N. Armstrong, and said

Board of Control of the Michigan State Prison at Jackson were making a mistake in purchasing all new machinery, as the said

Ayton Machinery, owned by your petitioner, was practically
51 as good as new, and that if he, said Allen N. Armstrong,

would permit your petitioner to substitute said Ayton machinery for an equal amount of new machinery, in the event a contract was made for the purchase of new machinery for the manufacture of twine and cordage at said prison, he, your petitioner, would make him, said Allen N. Armstrong, a present of one thousand dollars and possibly more, or any other sum of money, or any other thing; that he your petitioner, did not, in the State of Michigan, or elsewhere, at any time, either alone or in co-operation with any other person or persons, enter into any agreement, or have any understanding, with said Allen N. Armstrong, whereby said Allen N. Armstrong was to permit the substitution of any used or worn machinery for new machinery in said prison at Jackson, Michigan, or whereby said Allen N. Armstrong was to permit your petitioner or Hoover & Gamble Company, or any other person or persons, to retain any money or moneys from the people and State of Michigan, or whereby said Allen N. Armstrong was not to communicate to said Board of Control, or any officer of the State of Michigan, or any other person, anything concerning the alleged substitution of any old, used or worn machinery for new machinery, or anything concerning any matter whatever, or whereby said Allen N. Armstrong was to do any act or acts, or to refrain or abstain from doing any act or acts in violation of his, said Allen N. Armstrong's, duty as warden of said State prison, or whereby your petitioner, or any other person or persons, was to or should receive from the people and State of Michigan any sum of money by any false representations, or by any fraudulent devices or by any false statement or statements, or by any
deceitful act or conduct, or whereby said Allen N. Armstrong

52 was induced to consent to substitute for certain new machinery agreed to be furnished and installed in said State prison by said Hoover & Gamble Company, as alleged in said indictment, certain other worn, used and second-hand machinery of like description, or whereby second-hand, used and worn machinery was to be furnished by your petitioner, or by any other person or persons, in place and in stead of the machinery described in the bid and offer and in the contract set out in said "Indictment Exhibit A," or whereby he, your petitioner, either along or in co-operation with any other person or persons, obtained from said Allen N. Armstrong the acceptance of any second-hand, used and worn machinery by said Allen N. Armstrong and said Board of Control.

And your petitioner further shows that he, your petitioner, did not at any time in the State of Michigan, or elsewhere, enter into any of the corrupt agreements alleged in either of said indictments with said Allen N. Armstrong or with any other person, and that he, your petitioner, did not, at any time in the State of Michigan, or elsewhere do, or attempt to do any act in violation of, or for the purpose of violating the laws of the State of Michigan, and that he, your petitioner, did not, in the State of Michigan, or elsewhere, at any time

whatever, have any communication, directly or indirectly, with said Allen N. Armstrong, about offering or promising him, said Allen N. Armstrong, any money or thing as a bribe or for the purpose of influencing the conduct of said Allen N. Armstrong, as warden of said State prison, and that he, your petitioner, did not, in the State of Michigan, or elsewhere, at any time, have, directly or indirectly, any communication with said Allen N. Armstrong, or any other person, concerning the making of any false representation whatever to the people of the State of Michigan, or to said Board of Control, or to any other person or persons, or concerning the obtaining of any money or any thing by false representations from the State of Michigan, or from any person representing the State of Michigan, or from any other person.

And your petitioner further shows that he, your petitioner, is imprisoned and detained by said Christopher Strassheim, Sheriff of said Cook County in the State of Illinois solely by virtue of said extradition warrant issued by the Governor of the State of Illinois upon the requisition of the Governor of the State of Michigan.

And your petitioner further shows that he, your petitioner, was, on the twenty-fifth day of May in the year 1909, arrested and detained on and by virtue of said extradition warrant issued by the Governor of the State of Illinois in pursuance of the requisition of the Governor of the State of Michigan, and that after he was so arrested and detained on said twenty-fifth day of May in the year 1909, and on said twenty-fifth day of May in the year 1909, your petitioner sued out and obtained from Honorable William H. McSurely, Judge of the Superior Court of Cook County, in the State of Illinois, and ex-officio Judge of the Criminal Court of said Cook County, a writ of habeas corpus for the purpose of obtaining the release and discharge of your petitioner from said arrest and detention of your petitioner; that said writ of habeas corpus so issued by said Honorable William H. McSurely came on for hearing in said Criminal Court of Cook County before the Honorable Willard Mc-

51 Ewen, a Judge of said Superior Court of Cook County in said State of Illinois and Ex Officio Judge of said Criminal Court of Cook County, and that the said Honorable Willard M. McEwen on said hearing refused to discharge your petitioner from said arrest and detention on said twenty-fifth day of May in the year 1909, and on the twenty-third day of June in the year 1909 ordered your petitioner to be remanded to the custody of said Christopher Strassheim, Sheriff of said County of Cook, to be by said Sheriff delivered to said Jacob F. Strobel, as agent of the State of Michigan, to be by said Jacob F. Strobel transported to the State of Michigan, and that a transcript of all the proceedings had and all the things done in suing out said writ of habeas corpus and on said hearing of said writ of habeas corpus by said Honorable William H. McSurely and said Honorable Willard M. McEwen, certified by the Clerk of said Criminal Court of Cook County, in accordance with the laws of the State of Illinois, is hereto attached and marked "Exhibit Criminal Court"; that said transcript so certified and

marked "Exhibit Criminal Court" is hereby made a part of this petition.

And your petitioner further shows that said writ of habeas corpus, so obtained by your petitioner from said Honorable William H. McSurely, and that said hearing upon said writ of habeas corpus before the said Honorable Willard M. McEwen, and that said order entered in said Habeas Corpus proceedings, whereby your petitioner was remanded to the custody of the sheriff of said Cook County, to be, by said Sheriff, delivered to said Jacob F. Strobel, as Agent of the State of Michigan, as aforesaid exhaust all the remedies given and granted to your petitioner under the laws of

55 the State of Illinois for the purpose of seeking to obtain, or obtaining, the release and discharge of your petitioner from said arrest and detention of your petitioner under and by virtue of said extradition warrant issued by the Governor of the State of Illinois in pursuance of the requisition of the Governor of the State of Michigan; and that under the laws of the State of Illinois, an order of any Illinois Court or of any Judge of any Illinois Court in habeas corpus proceedings, remanding the petitioner in such proceedings to the custody of the officer by whom such petitioner is detained, is final, and that no appeal or writ of error lies, under the laws of the State of Illinois, from such order to any other court.

And your petitioner further shows, that he was born in Hamilton County, in the State of Illinois, in the year 1853; that he has been continuously a resident of the State of Illinois from said year 1853 until the day on which he signs this petition, except that during the ten years intervening between the years 1880 and 1890, during which ten years your petitioner was a resident of the City of Indianapolis, in the State of Indiana; and that your petitioner now lives and has, during the seven years last past been living in the house numbered 1624 Kenmore Avenue, in the City of Chicago, in the County of Cook aforesaid.

Wherefore your petitioner prays that a writ of habeas corpus may issue out of the District Court of the United States for the Northern District of Illinois, Eastern Division, directed to the said Christopher

56 Strassheim, Sheriff of said Cook County, in the State of Illinois, requiring him to produce the body of your petitioner before said District Court of the United States, at some convenient time to be therein designated, there to abide what shall be the award of the court in the premises, and that your petitioner may be discharged from said imprisonment and detention.

MILTON DAILY,

WILLIAM S. FORREST,

Counsel for said Milton Daily.

STATE OF ILLINOIS,

County of Cook, ss:

Milton Daily, the petitioner above named, being first duly sworn, upon his oath states, that he has read the foregoing petition by him subscribed and that he knows the contents thereof, and that said petition is true of his own knowledge in substance and in fact.

MILTON DAILY.

Subscribed and sworn to by the said Milton Daily before me this 23rd day of June, A. D. 1909.

B. C. BACHRACH,
Notary Public. [SEAL.]

Endorsed: 10309. In the District Court of the United States for the Northern District of Illinois Eastern Division. Milton Daily vs. Christopher Strassheim, Sheriff of Cook County in the State of Illinois. Petition for writ of habeas corpus. Filed June 23, 1909. T. C. MacMillan, Clerk. \$10.00 Deposit. William S. Forrest, Counsel for Milton Daily.

57 And afterwards to wit, on the 23rd day of June, A. D. 1909, the following order was had and entered of record in said cause to wit:

No. 10309.

In re Petition of MILTON DAILY for a Writ of Habeas Corpus.

On motion of Wm. S. Forrest, Esq., Attorney for the relator in the petition filed herein and on notice to the Attorney for Christopher Strassheim It is

Ordered that a Writ of Habeas Corpus issue to Luman T. Hoy, Marshal of the United States for the Northern District of Illinois, according to the prayer of said petition and that the said writ be made returnable on the 23rd day of June A. D. 1909, at the hour of 2:15 P. M. of said day.

58 And afterwards, to wit, on the 23rd day of June, A. D. 1909, there was issued out of and under the seal of said Court, in the above entitled cause, a Writ of Habeas Corpus, same being in the words and figures following, to wit:

59 DISTRICT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

The United States of America to Christopher Strassheim, Sheriff of Cook County, in the State of Illinois, Greeting:

We command you that you do at fifteen minutes after two o'clock in the afternoon of this 23rd day of June in the year 1909, without excuse or delay, bring or cause to be brought before the District Court of the United States of America, for the Northern District of Illinois, now sitting in the Court Room of said District Court, in the City of Chicago, in said District the body of Milton Daily, by whatever name or addition he is known or called, and who is now unlawfully detained in your custody, as it is said, together with the day and cause of his caption and detention then and there to perform and abide such order and direction as our said District Court shall make in that behalf. Hereof make due return under the penalty of what the law directs.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. Kenesaw M. Landis, judge of the District Court of the United States of America, at Chicago, aforesaid, this 23rd day of June in the year of our Lord one thousand nine hundred and nine and of our independence the 133rd year.

[SEAL OF COURT.]

T. C. MacMILLAN, *Clerk*.

60 I have served this writ within my district in the following manner to wit:

By delivering a true copy thereof to Christopher Strassheim Sheriff of Cook County in the State of Ill., at Chicago on the 23rd day of June 1909 at 11 o'clock a. m.

1 service.....	2.00
1 mile.....	.06
	<hr/> 2.06

LUMAN T. HOY,

U. S. Marshal.

By H. B. COY, *Deputy*.

[Endorsed:] 10309. "By the Habeas Corpus Act." District Court, United States, Northern District of Illinois. In the Matter of the Petition of Milton Daily U. S. M. No. 8138. For a Writ of Habeas Corpus. Writ of Habeas Corpus. Returnable June 23, 1909, at 2.15 o'clock P. M. T. C. MacMillan, Clerk. Wm. S. Forrest, Att'y for Petitioner. Filed June 25, 1909. T. C. MacMillan, Clerk.

61 And afterwards, to wit: on the 24th day of June, A. D. 1909, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Stipulation; same being in the words and figures following, to wit:

No. —.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

MILTON DAILY

vs.

CHRISTOPHER STRASSHEIM, Sheriff of Cook County, in the State of Illinois.

It is hereby agreed and stipulated by and between the said Milton Daily and the said Christopher Strassheim, Sheriff, etc., and their respective counsel, that the application and petition for said writ of habeas corpus in the above entitled case shall for all purposes, by both of said parties, be taken as the answer of the said Milton Daily

to the return in the above entitled case of said Christopher Strassheim, Sheriff, etc.

WILLIAM S. FORREST,

Counsel for said Milton Daily.

JOHN E. W. WAYMAN,

State's Attorney, Counsel for said

Christopher Strassheim, Sheriff, etc.

Endorsed: No. 10309. In the District Court of the United States for the Northern Dist. of Illinois. Eastern Division. Milton Daily vs. Christopher Strassheim, Sheriff, etc. Stipulation that application and petition for writ of habeas corpus shall be taken as the answer to the return. Filed this 24 day of June, A. D. 1909. T. C. MacMillan, Clerk. William S. Forrest, Counsel for said Milton Daily. F. L. Barnett, Counsel for said Christopher Strassheim, Sheriff, etc.

62 And afterwards towit, on the 28th day of June A. D. 1909, the following order was had and entered of record in said cause towit:

No. 10309.

In re Petition of MILTON DAILY for a Writ of Habeas Corpus.

This matter coming on to be heard come the parties by their attorneys and on motion of the relator by his attorney, leave is given him to amend his petition by striking out pages 48, 49, 50 and 51 and the first five (5) lines of page 52, and also to amend a part of page 53; and leave is also given to amend the return by attaching thereto a copy of the remanding order and the court having heard the evidence adduced, and arguments of counsel to conclusion, and not being satisfactorily advised in the premises takes the matter under advisement.

63 And afterwards, to wit, on the 28th day of June, A. D. 1909, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Demurrer; same being in the words and figures following, to wit:

In the District Court of the United States, Northern District of Illinois.

THE PEOPLE ex Rel. MILTON DAILY

v.

CHRISTOPHER STRASSHEIM, Sheriff of Cook County.

Writ of Habeas Corpus.

Demurrer.

And the said respondent, Christopher Strassheim of Cook County by John E. W. Wayman, State's Attorney of Cook County comes now

and defends the wrong and injury, when, etc., and says that the answer of Milton Daily, relator, above, named and the matters and things in said answer contained, in manner and form as the same are above set forth, are not sufficient in law for him, the said relator, to maintain his aforesaid action against this respondent, and he the said respondent is not bound by law to answer the same, and this he is ready to verify:

Wherefore, for want of a sufficient answer in this behalf
64 the said respondent prays judgment, etc.

CHRISTOPHER STRASSHEIM,
By JOHN E. W. WAYMAN,
State's Attorney, Cook County,
Attorney for Respondent.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JOHN E. W. WAYMAN,
Attorney for Respondent.

Endorsed: 10309. District Court. Milton Daily vs. Christopher Strassheim, Sheriff of Cook County. Demurrer. Filed in open Court 9 o'clock P. M. June 28, 1909. T. C. MacMillan, Clerk. J. E. W. Wayman, Att'y for Resp'd't.

65 And afterwards to wit, on the 20th day of July, A. D. 1909 the following order was had and entered of record in said cause to wit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

This matter coming on to be heard on the demurrer of the respondent to the answer of the petitioner to the return of said respondent to the Writ, come the parties by their Attorneys and the Court after having heard the arguments of counsel and being fully advised in the premises It is

Ordered that said demurrer be and the same hereby is overruled and thereupon the respondent by his Attorney enters his motion for leave to file certain affidavits and the further hearing of this matter is continued.

66 And afterwards to wit, on the 30th day of September, A. D. 1909, the following order was had and entered of record, in said cause, to wit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

Come the parties by their attorneys and on motion It is

Ordered by the court that this cause be and it hereby is set for hearing on Monday, October 4, A. D. 1909, at 10:15 o'clock A. M.

67 And afterwards to wit, on the 4th day of October, A. D. 1909, the following order was had and entered of record, in said cause, to wit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

Come the parties by their attorneys and on motion It is Ordered by the Court that the hearing of the motion to set this cause for hearing be continued until October 8, 1909.

68 And afterwards to wit, on the 8th day of October, A. D. 1909, the following order was had and entered of record, in said cause, to wit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

Come the parties by their attorneys and on motion It is Ordered by the court that the hearing on the question of the admissibility of certain affidavits be set for Thursday October 14, 1909, at ten o'clock A. M.

69 And afterwards to wit, on the 16th day of October, A. D. 1909, the following order was had and entered of record, in said cause, to wit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

Come the parties by their attorneys and on motion It is

Ordered by the Court that this matter be set for hearing on October 25, 1909, at 10:15 o'clock A. M. and on motion of relator by his attorney leave is given him to file an amended answer to the return of the respondent.

70 And afterwards, to wit, on the 16th day of October, A. D. 1909, there was filed in the Clerk's Office of said Court, in the above entitled cause, an Amended Answer: same being in the words and figures following, to wit:

UNITED STATES OF AMERICA:

*Amended Answer of Said Milton Daily to Said Return of Said
Christopher Strassheim, Sheriff of Cook County, in the State
of Illinois.*

In the District Court of the United States for the Northern District
of Illinois, Eastern Division.

No. 10309.

MILTON DAILY

vs.

CHRISTOPHER STRASSHEIM, Sheriff.

The Amended Answer of Said Milton Daily to Said Return of Said
Christopher Strassheim, Sheriff of Cook County, in the State of
Illinois.

To the said United States District Court, Honorable Kenesaw M.
Landis, Judge presiding:

The said Milton Daily, in answer to the return of said Christopher
Strassheim, Sheriff of Cook County, in the State of Illinois, to the
Writ of Habeas Corpus directed to said Christopher Strassheim,
Sheriff of said Cook County, in the above matter, denies that the
said indictment or indictments referred to by the Governor of the
State of Illinois in said Extradition Warrant charges him, said

71 Milton Daily, with having committed against the laws of
the State of Michigan *gan* the crime of bribery or the crime
of obtaining ten thousand dollars in money by false pre-
tenses or any other crime.

Said Milton Daily in further answering said return denies that he,
said Milton Daily, in the State of Michigan, committed any crime
whatever against the laws of the State of Michigan and thereafter
fled or departed from the State of Michigan: and said Milton Daily
in further answering said return, denies that he, said Milton Daily,
is a fugitive from the justice of the State of Michigan within the
meaning of the Constitution of the United States.

And the said Milton Daily in further *in* answering said return,
states that he is informed and believes and charges the fact to be
that said extradition warrant was granted and issued by the Gov-
ernor of the State of Illinois solely and exclusively upon, because of,
and in pursuance of a certain requisition of and from the Governor
of the State of Michigan and certain papers which accompanied
and were annexed to said requisition, and not because or on account
of any fact, matter, thing, or evidence not stated in said requisition
or in said papers which accompanied and were annexed to said
requisition; that he, said Milton Daily, has read and knows the

contents of said requisition and all and singular said papers which accompanied and were annexed to said requisition.

And said Milton Daily in further answering said return, states that said requisition is in the words and figures following, to wit:

72 State of Michigan, Executive Department,
 Fred M. Warner,
 Governor in and Over the State of Michigan.

To the Governor of the State of Illinois:

Whereas, it appears by Indictments and Warrants which are hereunto annexed, and which I certify to be authentic and duly authenticated, in accordance with the laws of this State, that Milton Daily stands charged with the crime of bribery and obtaining ten thousand dollars in money by false pretenses which I certify to be a crime under the laws of this State, committed in the County of Jackson in this State, and it having been represented to me that he has fled from the justice of this State and may have taken refuge in the State of Illinois.

Now, therefore, Pursuant to the provisions of the Constitution and the laws of the United States, in such case made and provided, I do hereby require that the said Milton Daily be apprehended and delivered to Jacob F. Strobel who is hereby authorized to receive and convey him to the State of Michigan, there to be dealt with according to law. The State to be liable for no expense incurred in the pursuit and arrest of said fugitive.

73 In Witness Whereof, I have hereunto set my hand, and caused the Great Seal of the State to be affixed at Lansing, this nineteenth day of May in the year of our Lord one thousand nine hundred and nine and of the Independence of the United States of America the one Hundred and thirty-third.

By the Governor:

[SEAL.]

FRED M. WARNER.

FREDERICK C. MARTINDALE,
Secretary of State.

74 And said Milton Daily in further answering said return states, that the said papers which accompanied and were annexed to said requisition are the following fourteen papers, and the following fourteen papers only:

First. A certain opinion of the Deputy Attorney General of the State of Michigan, which opinion is in the words and figures following, to wit:

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
LANSING, May 19th, 1909.

SIR: After having carefully examined the annexed application for requisition for Milton Daily, and the accompanying papers thereto attached, I respectfully submit that, in my opinion, such ap-

plication is in due form and complies with all the requirements of law, and that you may properly grant the same.

HENRY E. CHASE,
Deputy Attorney General.

To His Excellency, the Governor.

75 Second. A certain application for said requisition, which said application for said requisition is in the words and figures following, to wit:

"Application for Requisition.

Interstate.

To Fred M. Warner, Governor in and over the State of Michigan:

The undersigned, Prosecuting Attorney for the County of Jackson in said State, respectfully applies for a requisition upon the Governor of the State of Illinois for the arrest and rendition of Milton Daily late of said County, and therein charged in due form of law with the crime of bribery, and obtaining ten thousand dollars in money by false pretenses. The undersigned designates Jacob F. Strobel to receive such requisition, and certifies that the said Jacob Strobel agent, has no private interest in the arrest of such fugitive, and is a proper person for such agency.

The undersigned further certifies, that in his opinion the ends of public justice require that the said Milton Daily alleged criminal be brought to this State for trial at the public expense; that he believes he has sufficient evidence to secure his conviction; that this application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted the criminal proceedings shall not be used for any of said objects; and this is the first application that has been made for a requisition for said Milton Daily for the offense named or on any charge arising out of the same facts.

76 Accompanying this application are duly certified copies of proofs on which the indictments and warrants against the said Milton Daily was filed and also a certified copy of said indictments and warrants also of affidavits showing the connection of said Milton Daily with the above crime and his presence in this State at the time such offense was committed, and of his having been found in the State of Illinois where now supposed to be.

Dated May 19th, A. D. 1909.

ALBERT O. REECE,
Prosecuting Attorney of Jackson County.

Reference is hereby made to statutes of Michigan bearing upon the alleged offense. C. L. of 1897, Sec. 11311 and 11575."

77 Third. Three certain certificates of the Secretary of State of the State of Michigan, which said three certificates of said Secretary of State are in the words and figures following, to wit:

"STATE OF MICHIGAN,
Department of State:

I, Frederick C. Martindale, Secretary of State of the State of Michigan, and custodian of the Great Seal of the State, hereby certify that James A. Parkinson whose official attestation appears upon the annexed instrument, was, at the date of the attestation thereof, Circuit Judge in and for the County of Jackson, in said State, duly elected and qualified, and authorized by the laws of this State to make such attestations; that to all his official acts as such Circuit Judge full faith and credit ought to be given in all Courts of Justice and elsewhere; that said instrument is executed and acknowledged in conformity to the laws of this State; and that said attestation is in due form and by the proper officer, whose signature thereto I verily believe to be genuine.

In Witness Whereof, I have hereunto affixed my signature and the Great Seal of the State, at Lansing, this nineteenth day of May, in the year of our Lord nineteen hundred nine.

[SEAL.]

FREDERICK C. MARTINDALE,
Secretary of State."

78 "STATE OF MICHIGAN,
Department of State:

I, Frederick C. Martindale, Secretary of State of the State of Michigan and Custodian of the Great Seal of the State, hereby certify that Albert O. Reece, whose official attestation appears upon the annexed instrument, was, at the date of the attestation thereof, Prosecuting Attorney in and for the County of Jackson, in said State, duly elected and qualified, and authorized by the laws of this State to make such attestations; that to all his official acts as such Prosecuting Attorney full faith and credit ought to be given in all Courts of Justice and elsewhere; that said instrument is executed and acknowledged in conformity to the laws of this State; and that said attestation is in due form and by the proper officer, whose signature thereto I verily believe to be genuine.

In witness whereof, I have hereunto affixed my signature and the Great Seal of the State, at Lansing, this nineteenth day of May in the year of our Lord nineteen hundred nine.

[SEAL.]

FREDERICK C. MARTINDALE,
Secretary of State."

79 "STATE OF MICHIGAN,
Department of State:

I, Frederick C. Martindale, Secretary of State of the State of Michigan and Custodian of the Great Seal of the State, hereby certify that George H. Townsend, whose official attestation appears upon the annexed instrument, was, at the date of the attestation thereof, County Clerk in and for the County of Jackson, in said State, duly elected and qualified, and authorized by the laws of this State to make such attestations; that to all his official acts as such County

Clerk full faith and credit ought to be given in all Courts of Justice and elsewhere; that said instrument is executed and acknowledged in conformity to the laws of this State; and that said attestation is in due form and by the proper officer, whose signature thereto I verily believe to be genuine.

In witness whereof, I have hereunto affixed my signature and the Great Seal of the State, at Lansing, this nineteenth day of May in the year of our Lord nineteen hundred nine.

[SEAL.]

FREDERICK C. MARTINDALE,

Secretary of State."

80 Fourth. A certain copy of an indictment (which said copy of indictment is herein and hereinafter described and referred to as "Indictment Exhibit A"), which said copy of said indictment is in the words and figures following to wit:

81 "STATE OF MICHIGAN,
County of Jackson, ss:

The Circuit Court for the County of Jackson, at the March Term,
A. D. 1909.

The grand jurors of the said State of Michigan, in and for the said County of Jackson, inquiring in and for the body of said County, upon their oath, do present that:

Heretofore, to wit: On the First day of June, A. D. 1907, and from thence hitherto one Allen N. Armstrong was an executive officer of said State of Michigan, to wit: Warden of the Michigan State Prison at Jackson in said State and was duly appointed, qualified and acting as such warden and was then and there, under the provisions of Act number two hundred and eleven of the Public Acts of the year 1907, authorized and empowered, in connection with the board of control of said State prison at Jackson to purchase the necessary machinery for the equipment of a twine and cordage plant in said prison and then and there was empowered to act, vote, judge and decide on the matter of said purchase in his, the said Allen N. Armstrong's, official capacity as warden of said prison as aforesaid,

and one Milton Daily, late of the city of Chicago, State of Illinois, then and there being interested as a bidder for the equipment of his said plant and the furnishing of machinery therefor, both in his, the said Milton Daily's, individual capacity, and as sales agent for the Hoover & Gamble Company, a corporation of the State of Ohio, located at Miamisburg, Ohio, and having theretofore entered into a contract with the said State of Michigan, acting through the said Allen N. Armstrong as warden and the board of control of the Michigan State prison for the sale by the said Hoover & Gamble Company to the said State of Michigan of certain machinery and equipment for the said twine and cordage plant, under which said contract said Hoover & Gamble Company had agreed and were bound to furnish such new machinery for use therein as in said contract provided, and said Milton Daily having

theretofore corruptly agreed with said Allen N. Armstrong, as such warden, that in place of such new machinery, so contracted to be furnished by said Hoover & Gamble Company, certain second-hand, used and worn machinery, previously to and at that time owned by the said Milton Daily should be fraudulently substituted for such new machinery so contracted to be furnished by said Hoover & Gamble Company, and said worn, used, and second-hand machinery, having been prior to said date so substituted with the knowledge and consent of said Allen N. Armstrong under such corrupt

83 agreement with said Milton Daily, the said Milton Daily then and there, well knowing the premises and the official capacity in which said Allen N. Armstrong was then and there acting and the authority and power of the said Allen N. Armstrong in the premises, did, on to wit: the 13th day of May, 1908, at the city of Jackson, in said county of Jackson, corruptly give to the said Allen N. Armstrong, then and there acting as such executive officer, as aforesaid, a gift of gratuity, to wit: Fifteen hundred dollars of the lawful money of the United States with the intent then and there to influence said Allen N. Armstrong in his action as said warden of the State prison as aforesaid to acquiesce in and agree to the said fraudulent substitution of said used, worn, and second-hand machinery and to refrain and abstain from communicating to the proper officers of said State and said board of control the fact of such substitution and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of the moneys prior to that time had and received from said State of Michigan as the purchase price of said machinery and the equipment so fraudulently delivered under said contract, all of which said acts were in violation of his duty as warden of said state prison as aforesaid, contrary to the form of the statute in such case made and provided and against the peace

84 and dignity of the People of the State of Michigan

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit: on the first day of June, 1907, and from thence hitherto one Allen N. Armstrong was an executive officer of the said State of Michigan, to wit: warden of the Michigan State Prison at Jackson in said State and was duly appointed qualified and acting as such warden and was then and there, under the provision of act number two hundred and eleven of the public Acts of the year 1907, authorized and empowered, in connection with the board of control of said state prison at Jackson, to purchase for said State of Michigan the necessary machinery for the equipment of a twine and cordage plant in said prison and was then and there by said act empowered and authorized to act, vote and decide in his, the said Allen N. Armstrong's official capacity as warden of said State prison as aforesaid on the matter of such purchase, its kind, and character, and the acceptance of bids for the furnishing and sale to the State of Michigan of such machinery, and one Milton Daily, late of the city of Chicago, State of Illinois, then and there

- being interested as a bidder for the furnishing and sale of
85 such equipment of said plant to said State of Michigan and
the furnishing of machinery therefor, both in his, the said
Milton Daily's, individual capacity as sales agent for the Hoover &
Gamble Company, a corporation of the State of Ohio, located at
Miamisburg, Ohio, said Milton Daily being desirous of entering into
a contract with said State of Michigan acting through the said
Allen N. Armstrong as warden and the board of control of the
Michigan State Prison, for the sale by said Hoover & Gamble Com-
pany and said Milton Daily to the said State of Michigan of certain
machinery and equipment for the said twine and cordage plant,
and then and there knowing that said board of control desired
and intended to purchase new machinery for the equipment of said
twine and cordage plant and that said board did not desire or intend
to contract for or purchase used, worn and second-hand machinery
therefor, the said Milton Daily, well knowing the premises and that
the action, vote, judgment and decision of said Allen N. Armstrong,
in his official capacity as warden of said prison as aforesaid, was,
under authority of law, essential to the completion of said purchase,
and well knowing that said board of control did not desire or intent
to purchase said second-hand, used and worn machinery, did, on to
wit the 22nd day of July, 1907, by corrupt and fraudulent
86 agreement with the said Allen N. Armstrong, submit to the
said board of control and said Allen N. Armstrong, as warden,
a certain bid and offer in writing to sell to said State of Michigan
certain machinery at a certain specified price therefor, to wit: twenty-
nine thousand six hundred and eighty dollars, said offer containing
the provision that said machinery should be all new machinery, and
having then and there by corrupt agreement with said Allen N.
Armstrong induced the said Allen N. Armstrong to consent
to substitute for certain of said new machines so agreed to
be furnished certain other worn, used and second-hand ma-
chinery of like description, to wit: one coarse breaker, one special
breaker and spreader, one regular spreader, three drawing frames,
coarse, medium and fine, two finishing drawing frames, four two-
spindle balling machines, one layer or tie cord machine, one tow
picker, twenty-eight double flyer spinners, two geared spinners, and
one tow card, which said second-hand, used and worn machinery it
was correctly agreed should be furnished by said Milton Daily in
place and stead of the new machinery so described above in said bid
and offer, and having through such corrupt agreement with said
Allen N. Armstrong secured the acceptance of said second-hand, used
and worn machinery by said Armstrong and said board of control,
said board being in ignorance of such proposed substitution
87 of said second-hand, used and worn machinery for such new
machinery, and said Milton Daily, acting through and in
conjunction with said Hoover & Gamble Company, having there-
after furnished to the said State of Michigan and to said Allen N.
Armstrong as warden of said State prison, and installed in said
twine and cordage plant such second-hand, worn and used ma-
chinery, through and in conjunction with said Hoover & Gamble

Company, and having received therefor full payment from said State of Michigan at the prices fixed in said contract for said machinery as new said Milton Daily, well knowing the premises, did thereafter, to wit: on the 13th day of May, 1908, at the city of Jackson in said County of Jackson, corruptly give to the said Allen N. Armstrong, then and there acting as such executive officer and warden, as aforesaid, a gift or gratuity, to wit: fifteen hundred dollars of lawful money of the United States, with the intent then and there to influence said Allen N. Armstrong in his action in his official capacity as warden of said State Prison as aforesaid to continue his consent to the furnishing and acceptance of said second-hand, used and worn machinery so substituted as aforesaid, as a compliance with said contract, and to refrain and abstain from communicating to the proper officers of said State or to said board of

88 control the fact of such substitution and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of the moneys so received by them and each of them from said State of Michigan as the purchase price of said machinery and equipment so contracted to be furnished by the said Milton Daily and said Hoover & Gamble Company in accordance with the bid and offer and contract before set forth, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit: on the 13th day of May, 1908, one Allen N. Armstrong, then and there being an executive officer of said State of Michigan, to wit: warden of the Michigan State Prison at Jackson in said State, duly appointed, qualified and acting in that capacity, and then and there being charged, empowered and authorized by law to purchase, in conjunction with the board of control of the said state prison, certain machinery and equipment for the twine and cordage plant at said state prison, duly authorized and established by law, and then and there being charged with the

89 duty of accepting the machinery so purchased and installed, and having theretofore fraudulently and corruptly accepted certain machinery sold to said State of Michigan by one Milton Daily, late of the City of Chicago, State of Illinois, which said machinery was not in accordance with the offer and bid of said Milton Daily, previously made to said Allen N. Armstrong, as such warden, and said board of control, and the contract therefor executed in accordance with said offer and bid, said contract having been made with the Hoover & Gamble Company, a corporation organized under the laws of the State of Ohio and having its principal office at Miamisburg, Ohio, but purporting to be made in accordance with and for the purpose of carrying out the bid and offer of said Milton Daily, said machinery so accepted not being in compliance with the said bid so submitted nor with the contract so made as aforesaid, and the moneys had and received as the purchase price for said machinery under said bid and said contract having been fraudulently

and corruptly received and taken by said Milton Daily and said Hoover & Gamble Company, and the fraud and corruption with respect thereto being unknown to said Board of control of said State prison and to said State of Michigan and the people thereof, all of which said premises were well known to the said Milton Daily,

90 he, the said Milton Daily, did, on the date aforesaid, at the city of Jackson in said county, corruptly give to the said Allen N. Armstrong, a gift or gratuity, to wit: the sum of fifteen hundred dollars of lawful money of the United States with intent then and there to influence the act, vote, opinion, decision and judgment of the said Allen N. Armstrong, then and there acting in his official capacity as warden of said state prison, and in violation of his duty in the premises to permit the said Hoover & Gamble Company and the said Milton Daily to retain the purchase price of the machinery so corruptly furnished and the moneys so fraudulently and corruptly received by them and to refrain and abstain from demanding the fulfillment of said contract by the said Milton Daily and the said Hoover & Gamble Company by the furnishing and installation of the new machinery required by said bid and offer and by the terms of said contract, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

Fourth Count.

The grand jurors aforesaid, upon their oath aforesaid, do further present that:

91 Heretofore, to wit: on the first day of June, 1907, and from thence hitherto one Allen N. Armstrong was an executive officer of said State of Michigan, to wit: warden of the Michigan State Prison at Jackson, in the city of Jackson, in said State, and was duly appointed, qualified and acting as such warden of said prison.

That thereafter and heretofore, to wit: on the 24th day of June, 1907, Act two hundred and eleven of the Public Acts of the State of Michigan for the year 1907, entitled; "An Act to provide for the installation, maintenance, equipment and operation of a twine and cordage plant to be operated by prison labor at the State Prison at Jackson, Michigan, to provide for the sale and disposition of the manufactured product; to define the duties of the warden and board of control of said prison in relation thereto; to make an appropriation for the fiscal year ending June thirty, nineteen hundred eight, to carry into effect the object and purposes of this bill and to provide a tax to meet the same," took effect and became a law of said State, which said act empowered, authorized and directed the said Allen N. Armstrong, as warden of the Michigan State Prison at Jackson and the board of control of said Michigan state prison at

92 Jackson, for and in behalf of said State of Michigan, to install, maintain, equip and operate a twine and cordage plant at said Michigan State prison and to purchase the necessary machinery for the manufacture of twine and cordage at said prison, the said Allen N. Armstrong, as said warden then and there being authorized and empowered to act, vote and decide in his, the said

Allen N. Armstrong's official capacity as said warden as aforesaid, in the matter of such purchase, the kind and character, and the acceptance of bids for the furnishing and sale to the said State of Michigan of such machinery for the manufacture of twine and cordage, all of which said matters and things were required by law to come before the said Allen N. Armstrong as said warden in his official capacity.

That thereafter and heretofore to wit: on the 19th day of July, 1907, one Milton Daily, late of the city of Chicago, State of Illinois, then and there being interested as a bidder for the equipment of said twine and cordage plant and the furnishing of the necessary machinery therefor, both in his, the said Milton Daily's, individual capacity and also as sales agent for the Hoover & Gamble Company, a corporation organized and existing under the laws of the State of Ohio, with its principal office located at Miamisburg, Ohio, submitted in writing his, the said Milton Daily's, bid for all new machinery necessary for the said equipment of said twine and cordage plant to the said Allen N. Armstrong as said warden of the Michigan state prison at Jackson in his official capacity as such warden, which said bid of the said Milton Daily was in words and figures as follows:

"CHICAGO, ILL., July 19th, 1907.

Mr. A. N. Armstrong, Warden, Jackson, Mich.

DEAR SIR: Complying with your request to quote on 120 spindle twine system, all new machinery to be manufactured by the Hoover & Gamble Company, I herewith submit as per their prices to me, the following:

1 #1 Breaker	\$1200.00
1 #2 Breaker	1200.00
1 Special Breaker and Spreader	1150.00
2 Spreaders (Regular) at \$1050 each	2100.00
3 Drawing Frames Coarse, Medium & Fine at \$550 each ..	1650.00
3 Finishers " " " " at \$550 each ..	1650.00
60 Double Flyer Spinning Jennies at \$260 each	15600.00
1 Duster & Cleaner	350.00
1 Tow Picker	400.00
1 Tow Card	950.00
1 Tensile Strength Testing Machine	110.00
1 Twine Reel	75.00
3 Bell Ringers at \$25 each	75.00
7 Baling Machines of 2 Spindles, 3 or 3 spindles	1745.00
1 24 Thread Rope Machine	850.00

29105.00

Yours very truly,

MILTON DAILY.

94 Terms, Cash or each shipment upon receipt of bill and B/L until 75% is paid for, balance of 25% when machinery is put in operation and fulfills warranty. Time to complete six months."

That thereafter and heretofore, to wit: on the 22nd day of July, 1907, the said bid of the said Milton Daily was duly considered and accepted by the said Allen N. Armstrong as said Warden of the Michigan State Prison, at Jackson, and the board of control of said Michigan state prison, for and in behalf of said State of Michigan, and on the said 22nd day of July 1907, an agreement in writing was made and entered into by and between the board of control of the Michigan state prison at Jackson for and in behalf of said state of Michigan, and the Hoover & Gamble Company, a corporation as aforesaid, pursuant to the said bid of the said Milton Daily, which agreement was in words and figures as follows:

95 "This Agreement made and entered into this 22nd day of July, A. D. 1907, by and between the Board of Control of the Michigan State Prison at Jackson, Mich. party of the first part, and the Hoover and Gamble Company, a corporation organized and existing under the laws of the State of Ohio whose principal office is located at the city of Miamisburg, Ohio, party of the second part, Witnesseth.

First. Whereas the said party of the first part did on the 9th day of July, A. D. 1907 invite bids for furnishing the machinery necessary for manufacturing twine, and

Whereas in pursuance of said request prices were received and considered by the said party of the first part on the 22nd day of July, A. D. 1907, and it was found that the said party of the second part presented the low bid, as contained in a letter from their General Sales Agent, Milton Daily of Chicago to Allen N. Armstrong under date of July 19, 1907, which letter is hereto attached and made a part of this contract; now therefore—

Second. It is mutually agreed by and between the parties hereto that the said party of the second part shall furnish to the
96 said party of the first part the following named machines at the times and in the manner and under the conditions hereinafter prescribed; to wit:

- 1 No 1 Breaker.
- 1 No. 2 Breaker.
- 1 Special Breaker and Spreader.
- 2 Spreaders (Regular).
- 4 Drawing Frames.
- 3 Finishers.
- 60 Double Flyer Spinning Jennies.
- 1 Duster and Cleaner.
- 1 Tow Picker.
- 1 Tow Card.
- 1 Tensile Strength Testing Machine.
- 1 Twine Reel.
- 4 Bell Ringers.

- 4 Baling Machines, 2 spindle.
- 3 Baling machines, 3 spindle.
- 1 24 Thread Rope machine.

Third. It is further mutually agreed by and between the parties hereto that the aforesaid machinery shall be delivered F. O. B. cars at Miamisburg, Ohio, on or before the 22nd day of January 1908 by the said party of the second part, unless prevented by fires or labor strikes; also that the said party of the second part shall furnish a competent man to superintend the installation and erection of the said machinery and to put the same in operation in a perfect and satisfactory manner.

Fourth. It is further mutually agreed by and between the parties hereto that the said party of the second part guarantees the machinery above mentioned to be a complete plant for the manufacture of binder twine and capable of producing 9600 lbs. of mercantile binder twine in a working day of eight hours with a sufficient force of operatives. Also that the said party of the second part guarantees that all the machinery above mentioned shall be constructed in a thorough manner free from any defects of materials or workmanship and finished in a first-class manner, also that it shall be of the latest approved patterns.

Fifth. It is further mutually agreed by and between the parties hereto that if the machinery mentioned above shall not be furnished and delivered on or before the 22nd day of January, 1908, the said party of the second part shall for each and every day that shall elapse after the said 22nd day of January, 1908 until the delivery of said machinery pay to the said party of the first part as and for liquidated damages the sum of forty dollars over and above all costs and expenses to which the said party of the first part may be put by reason of such delay.

Sixth. It is further mutually agreed by and between the parties hereto that in consideration of the performance by the party of the second part of the covenants and agreements herein contained the party of the first part shall pay to the party of the second part the sum of twenty nine thousand six hundred and eighty dollars (\$29,680.00) as follows: Full payment shall be made upon receipt of each bill of lading for the machinery shown on such bill until 75% of the total amount shall have been paid. The remaining 25% shall then be retained until the machinery is all installed and tested, and operating, so as to fulfill the guarantee above given, to the satisfaction and approval of C. G. Wrentmore Cons. Engr., of the Board of Control.

Seventh. It is further mutually agreed that this contract shall become valid and operative only upon the execution by the said party of the second part and delivery to the said party of the first part of a surety bond in the sum of ten thousand dollars pursuant to the provision of Act 187 of the Public Acts of the State of Michigan for the year 1905, and of a like bond for a like sum for the faithful performance of this contract and to indemnify the said first party against any and all suits for damages resulting from infringements of patents.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THOMAS J. NAVIN, [L. s.]
TIMOTHY C. QUINN, [L. s.]
GEO. W. MERRIMAN, [L. s.]

*Constituting the Board of Control of
the Michigan State Prison.*

THE HOOVER & GAMBLE CO.,
A. J. EMINGER,

Sec'y & Treas.

In presence of
ELSIE MILLS."

That on to wit: the said 19th day of July, 1907, the said Milton Daily, being then and there the owner of, or then and there having under his supervision and control, certain second-hand, used
100 and worn machinery for the machinery for the manufacture of twine and cordage, to-wit: one coarse breaker, one special breaker and spreader, one regular spreader, three drawing frames, coarse, medium and fine, two finishing drawing frames, four two spindle balling machines, one layer or tie cord machine, one tow picker, twenty-eight double flyer spinners, two geared spinners, and one tow card, which said second-hand, used and worn machinery for the manufacture of twine and cordage, he, the said Milton Daily, was endeavoring to fraudulently substitute for and in the place of an equal amount and kind of new machinery in the carrying out of the terms and conditions of said contract between the said State of Michigan and the said Hoover & Gamble Company, entered into a corrupt agreement with the said Allen N. Armstrong as said warden of the Michigan State prison to permit the said Milton Daily to fraudulently substitute for and in place of an equal amount and kind of new machinery provided for in said contract between the said State of Michigan and the said Hoover & Gamble Company, said second-hand, used and worn machinery for the manufacture of twine and cordage then and there owned by the said Milton Daily or then and there under the supervision and control of the said Milton Daily as aforesaid, and whereby he, the said Allen N. Armstrong, was to refrain and abstain from communicating to the proper
101 officers of said State or to said Board of control of the Michigan state prison at Jackson the fact of such substitution and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of all moneys received under or by reason of said contract between the said State of Michigan and said Hoover & Gamble Company as the purchase price of said machinery and equipment so fraudulently delivered or to be delivered under said contract to said State of Michigan.

And the said Milton Daily and the said Hoover & Gamble Company, having hereafter furnished and delivered to the said State of Michigan in accordance with the said corrupt agreement so as aforesaid made between said Milton Daily and the said Allen N. Armstrong, such second-hand, used and worn machinery above described

in place and stead of like new machinery which said contract provided should be sold and delivered by said Hoover & Gamble Company to the said State of Michigan, and said Milton Daily and the said Hoover & Gamble Company having received therefor from said State of Michigan the following purchase price provided in said contract for said new machinery, to wit: the sum of twenty-nine thousand six hundred and eighty dollars, he, the said Milton Daily,

for the purpose of completing, consummating and carrying out
 102 his, the said Milton Daily's corrupt agreement with the said Allen N. Armstrong, did thereafter, on to wit: the 13th day of May 1908, corruptly give to the said Allen N. Armstrong at the city of Jackson, in the county of Jackson a gift or gratuity, to wit: the sum of fifteen hundred dollars of the lawful money of the United States with intent then and there to influence the act, vote, opinion, decision and judgment of the said Allen N. Armstrong in the matter of the purchase of machinery for the manufacture of twine and cordage as aforesaid, the same being a matter required by law to come before said Allen N. Armstrong, as such warden in his official capacity, and to induce said Allen N. Armstrong then and there acting in his official capacity as warden of said state prison, and in violation of his lawful duty as such warden, to continue his consent to the non-performance of said contract and the acceptance of said second-hand, used and worn machinery, so substituted as aforesaid, as a sufficient compliance with said contract, and to refrain and abstain from communicating to the proper officers of said State or to the said board of contro- the fact of such substitution, and to permit the retention by the said Hoover & Gamble Company and
 the said Milton Daily of the moneys so received by them and
 103 each of them from said State — Michigan as the purchase price of said machinery and equipment so contracted to be furnished by the said Milton Daily to the said Hoover & Gamble Company in accordance with the contract before set forth, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

ALBERT O. REECE,

Prosecuting Attorney.

(Endorsements:) State of Michigan The Circuit Court for the County of Jackson. People of the State of Michigan, Complainant vs. Milton Daily, Defendant. Indictment. A true bill. John W. Boardman, Foreman. Albert O. Reece, Prosecuting Attorney. Filed May 1, 1909. Geo. H. Townsend, Clerk. People's witnesses: Allen N. Armstrong, John C. Wenger, Aaron Wenger, John B. Brewer, Richard Meyers, R. S. Neely, George R. Stone, Albert H. Pickett, Clarence G. Wrentmore, Henry C. Anderson, John R. Allen, Thomas J. Navin, George W. Merriman, Timothy C. Quinn, Fred M. Warner, Fred H. Helmer, Frank H. Newkirk, Martha Armstrong, Richard O. Morgan, Katherine Morgan, Will G. Cooper, John E. Bryers, Bernhardt Meyer, William R. Bates."

104 Fifth. A certain warrant for the arrest of said Milton Daily, which said warrant is in the words and figures following to wit:

“Warrant.

STATE OF MICHIGAN,
Jackson County, ss:

The Circuit Court for the County of Jackson, of the May Term, in the Year of our Lord One Thousand Nine Hundred and Nine.

In the Name of the People of the State of Michigan to the Sheriff or any Constable of said County, Greeting:

Whereas, the Grand Jurors of the People of the State of Michigan, inquiring in and for the body of said County, have upon their oaths presented unto this Court, that, heretofore, to wit, on the first day of June, A. D. 1907, at the City of Jackson in the County aforesaid, Milton Daily late of the City of Chicago, Illinois, did bribe a certain executive officer of the State of Michigan, to wit: one Allen N. Armstrong, being then and there Warden of the Michigan State Prison at Jackson, Michigan, as appears by a certain indictment filed in the office of the County Clerk of said County of Jackson, on the first day of May, 1909, against the form of the statute in such

105 case made and provided and against the peace and dignity of the People of the State of Michigan.

Therefore, in the name of the People of the State of Michigan, you are hereby commanded forthwith to arrest the said Milton Daily and bring him before this Court to be dealt with according to law.

Given under my hand and the seal of the Circuit Court for said County, at the Court House, in the City of Jackson, in said County, on the 3rd day of May, A. D. 1909.

JAMES A. PARKINSON,
Circuit Judge.”

[Copy Seal.]

106 Sixth. A certain other copy of an indictment (which said other copy of an indictment is herein and hereinafter designated and referred to as “Indictment Exhibit B”), and which said other copy of an indictment is in the words and figures following to wit:

107 “STATE OF MICHIGAN,
County of Jackson, ss:

The Circuit Court for the County of Jackson, at the March Term.
A. D. 1909.

The grand jurors of the said State of Michigan, in and for said County of Jackson, and inquiring in and for the body of said county, upon their oath, do present that:

Heretofore, to wit: on the first day of May, A. D. 1908, Allen N. Armstrong, Milton Daily and Andrew J. Eminger, at the city of Jackson, in the County of Jackson and State of Michigan, did, with intent to defraud and cheat the State of Michigan and the people thereof, knowingly and designedly falsely pretend that certain machinery for the manufacture of binding twine and cordage then and there installed by the Hoover & Gamble Company, a corporation existing under the laws of the State of Ohio, in the twine and cordage plant of the State of Michigan in the State prison at said city of Jackson, in said county, was new and unused and that the same complied with the requirements of a certain contract theretofore made by said Hoover & Gamble Company with the Board of Control of the state prison at Jackson, acting in behalf of said State of Michigan therein; whereas, in truth and in fact, said machinery was not new, but was second-hand, used and worn machinery, the said State of Michigan and the people thereof and the Board of Control of said prison being deceived thereby; and by means of said false and fraudulent pretences said Milton Daily, Allen N. Armstrong and Andrew J. Eminger did then and there, well knowing the premises and with the intent to cheat and defraud the State of Michigan and the people thereof, obtain of and from said State of Michigan a certain sum of money, to wit: ten thousand dollars of lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the people of the State of Michigan.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that:

Heretofore and to wit on or about the first day of July 1907, one Allen N. Armstrong, warden of said prison, and the board of control of said Michigan state prison, were duly authorized by law to purchase, in behalf of said state of Michigan, certain machinery for the manufacture of twine and cordage to be installed in the twine and cordage plant of the said State of Michigan at the state prison in the city of Jackson in said county; and the said Allen N. Armstrong, as warden, was then and there duly authorized to pay from the funds of said State of Michigan for the machinery so purchased under such authority, and the said Board of Control, acting under such authority, having determined to purchase therefor new machinery and having rejected a bid or offer of the said Hoover & Gamble Company, made through said Milton Daily as agent and Andrew J. Eminger, Secretary of said Company, for the furnishing of second-hand, worn and used machinery therefor, and having contracted with the said Hoover & Gamble Company for the furnishing of all new machinery for the manufacture of such twine and cordage in said plant of said State of Michigan as aforesaid, the said Allen N. Armstrong, Milton Daily, late of the city of Chicago, State of Illinois, and Andrew J. Eminger, late of the city of Miamisburg, State of Ohio, well knowing the premises, with intent to defraud and cheat the State of Michigan thereby, did, on to wit,

the first day of May, 1908, falsely and fraudulently pretend that the machinery so furnished and installed under said contract by said Hoover & Gamble Company was new machinery as required by said contract, whereas, in truth and in fact, a portion of said machinery, to wit: one coarse breaker, one special breaker and spreader, 110 one regular spreader, three drawing frames coarse, medium and fine, two finishing drawing *drawing* frames, four two spindle belling machines, one layer or tie cord machine, one tow picker, twenty-eight double flyer spinners, two geared spinners and one tow card, was second-hand, used and worn machinery which had theretofore been installed and used to the knowledge of all of said defendants in a twine and cordage plant at Ayton, in the province of Ontario, Dominion of Canada, with intent to defraud said State of Michigan, and the people thereof, and by means of said false and fraudulent pretenses did then and there with such intent obtain from said State of Michigan certain money, to wit: ten thousand dollars of lawful money of the United States, said State of Michigan and the people thereof and the said Board of Control of said prison replying on said false pretenses as true and being deceived thereby, contrary to the form of the statute in such case made and provided and against the peace and dignity of the people of the State of Michigan.

Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

Heretofore, and on, to wit, the first day of May, 1907, one Allen N. Armstrong was warden of the Michigan state prison at 111 the city of Jackson in said county, and under the laws of said state was, in conjunction with the Board of Control of said prison, duly authorized and empowered to purchase for and in behalf of said State of Michigan certain machinery for the manufacture of twine and cordage to be used in the installation, maintenance, equipment and operation of a twine and cordage plant for said state at the said state prison, and the said Allen N. Armstrong, as such warden, was then and there duly authorized to accept machinery so purchased and to pay therefor from the funds of said state of Michigan under his control under the laws of said state, and thereafter the said Board of Control and the said Allen N. Armstrong, as such warden, contracted with the Hoover & Gamble Company acting through Milton Daily, the agent, and Andrew J. Eminger, the secretary of said company, for the purchase of certain machinery to be used in the installation, maintenance, equipment and operation of said twine and cordage plant for said state, all of which, in accordance with the terms of said contract, was to be new machinery; that, before the making of said contract, said Allen N. Armstrong, conspiring with Milton Daily and Andrew J.

Eminger, had corruptly agreed to substitute for the machinery so contracted to be sold to said state of Michigan for 112 said plant as aforesaid certain old, worn and second-hand machinery of less value than the machinery so contracted to be sold, the said board of control of the state prison at Jackson being ignorant

of such conspiracy and such intended substitution of worn, second-hand and used machinery for the new machinery required by said contract to be furnished, and being deceived and defrauded by said substitution, and the said machinery so contracted for not being furnished as provided in said contract, but in place and stead of a portion thereof, said used, second-hand and worn machinery having been theretofore delivered and installed in said twine and cordage plant of said State, said Allen N. Armstrong, Milton Daily and Andrew J. Eminger, well knowing the premises and with intent to defraud and cheat the state of Michigan, did, to wit, on the first day of May, 1908, at Jackson in said county falsely and fraudulently pretend that the machinery so furnished and installed under said contract was the new machinery required thereby to be furnished and did render bills for such old, worn, and second-hand machinery as new machinery at the prices stipulated therefor in said contract, which bills were then and there duly audited and allowed by said

Allen N. Armstrong and said machinery then and there paid
113 for as new machinery, and the said Allen N. Armstrong,

Milton Daily and Andrew J. Eminger did then and there obtain and receive from said state of Michigan, by means of the false and fraudulent pretenses so as aforesaid set up, certain money, to wit, ten thousand dollars lawful money of the United States, the said State of Michigan and the people thereof and said board of control then and there relying upon such false and fraudulent pretenses as true and being deceived thereby, contrary to the form of the statute in such case made and provided and against the peace and dignity of the people of the State of Michigan.

ALBERT C. REECE,
Prosecuting Attorney.

114 Seventh, a certain warrant for the arrest of one Allen N. Armstrong (namely, the Allen N. Armstrong named in "Indictment Exhibit A" and in "Indictment Exhibit B") and said Milton Daily and one Andrew J. Eminger, which said warrant is in the words and figures following, to wit:

"Warrant.

STATE OF MICHIGAN,
Jackson County, ss:

The Circuit Court for the County of Jackson, of the May Term, in the Year of Our Lord One Thousand Nine Hundred and Nine.

In the name of the people of the State of Michigan to the Sheriff or any Constable of said County, Greeting:

Whereas, the Grand Jurors of the People of the State of Michigan, inquiring in and for the body of said County, have upon their oaths presented unto this Court, that, heretofore, to wit, on the first day of — A. D. 1908, at the City of Jackson in the County aforesaid, Allen N. Armstrong, Milton Daily and Andrew J. Eminger did,

then and there, by means of false pretenses, knowingly and designedly, with intent to cheat and defraud the State of Michigan obtain of and from said State of Michigan a certain sum of money, to wit: the sum of ten thousand dollars; as appears by a certain indictment filed in the office of the County Clerk of said County of Jackson, on the first day of May, 1909, against the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

Therefore, in the name of the People of the State of Michigan, you are hereby commanded forthwith to arrest the said Allen N. Armstrong, Milton Dailey and Andrew J. Eminger and bring them before this Court to be dealt with according to law.

Given under my hand and the seal of the Circuit Court for said County, at the Court House, in the City of Jackson, in said County, on the 3rd day of May, A. D. 1909.

[SEAL.]

JAMES A. PARKINSON,
Circuit Judge."

116 Eighth. A certain affidavit of said Jacob F. Strobel (namely, the Jacob F. Strobel mentioned in said extradition warrant and the said requisition), which said affidavit is in the words and figures following to wit:

117 "STATE OF MICHIGAN,
County of Jackson, ss:

Jacob F. Strobel, being first duly sworn, says that he is Under Sheriff of the county of Jackson in said State of Michigan, and that in his capacity as such officer he has in his hands for execution a criminal warrant for Milton Dailey, on the charge of bribery, and a criminal warrant for Milton Dailey, Andrew J. Eminger and Allen N. Armstrong, on the charge of obtaining ten thousand dollars in money from the State of Michigan by means of false pretences.

This deponent further says, that he has been creditably informed by the Police Department of the City of Chicago in the State of Illinois that the said Milton Dailey is under arrest in the said city of Chicago, and is in the State of Illinois at this time.

Deponent further says, that he believes the said Milton Dailey to be in the State of Illinois, a fugitive from justice.

JACOB F. STROBEL.

Subscribed and sworn to before me this 19th day of May, 1909.

CASSIUS M. JENKS,
Police Judge."

Ninth. A certain affidavit of Allen N. Armstrong, which said affidavit is in the words and figures following to wit:

118 "STATE OF MICHIGAN,
County of Jackson, ss:

Allen N. Armstrong being duly sworn deposes and says that on or about the first day of February, 1905, he was duly appointed Warden of the Michigan State Prison, located at the city of Jackson, in said county of Jackson, and immediately thereafter duly qualified and entered upon the discharge of the duties of said office, which he continued to hold and occupy until *or on* about the first day of February, 1909, and at the regular session of the Legislature of the State of Michigan for the year 1907 act No. 211 of the public acts of said state was passed and given immediate effect and approved by the Governor under date of June 24th, 1907, which act empowered, authorized and directed the warden and board of control of the Michigan State Prison at Jackson, at a cost of not to exceed fifty thousand dollars, to use, purchase, erect, equip and maintain the buildings, machinery, boilers and equipment necessary for the manufacture of twine and cordage, together with the warehouse to be used in connection with said twine and cordage plant, and which said act appropriated the sum of one hundred and seventy five thousand dollars for the purpose of said act,

119 fifty thousand dollars being appropriated for the purpose of purchasing, erecting and equipping the necessary buildings, machinery, boilers and equipment to be used therein. That acting pursuant to said act the warden and board of control of said prison called for bids for the equipment of 120 spinner plant for the manufacture of twine and cordage at said prison, together with the necessary preparing machines; that bids were duly furnished by the Watson Manufacturing Company of Paterson, New Jersey, and also by the Hoover & Gamble Company of Miamisburg, Ohio, through its sales agent Milton Daily of Chicago, Illinois. The original bid for all new machinery of the said Hoover & Gamble Company being twenty nine thousand eight hundred and five dollars, and for part new and part used machinery twenty-eight thousand and fifteen dollars. That prior to the 22nd day of July, the said Milton Daily appeared before this deponent as warden of the Michigan State Prison and the board of control of said prison at various meetings held for the purpose of considering the purchase of such machinery at the city of Jackson, in said county of Jackson, and at the city of Detroit, in said State of Michigan. That it was finally determined by the warden and board of control of said prison that it was advisable to purchase all new machinery, and the said Milton Daily as sales agent for the said Hoover & Gamble Company was requested to make a new bid for all new machinery, which he did under date of July 19, 1907, as set forth in the certified copy of indictment hereto attached. That the said bid of the said Milton Daily under date of July 19, 1907, was duly accepted by the warden and board of control of said prison.

120 with the addition of one drawing frame at \$550.00, and one bell ringer at \$25, making a total contract price the sum of \$29,680.00, and under date of July 22, 1907, the contract was duly entered into between the Board of Control of the Michi-

gan State Prison at Jackson and Hoover & Gamble Company of Miamisburg, Ohio, for the purchase of such new machinery in the manner set forth in the certified copy of indictment hereto attached. That this deponent learned from the said Milton Daily that some three or four years prior to the making of said contract the said Hoover & Gamble Company through its said sales agent Milton Daily had installed at Ayton, Canada, a 60 spinner plant for the manufacture of twine and cordage; that said plant has been operated for only about 45 days, which said machinery the said Milton Daily had recently acquired by purchase. That a few days prior to the acceptance of the said bid of the said Milton Daily, as above set forth, the said Milton Daily informed this deponent that he and the board of control of the Michigan State Prison at Jackson were making a mistake in purchasing all new machinery, as the said Ayton machinery owned by said Milton Daily was practically as good as new, and that if this deponent would permit the said Milton Daily to substitute said Ayton machinery for an equal amount of new machinery, in the event a contract was made for the purchase of new machinery for the manufacture of twine and cordage at said prison, he the said Milton Daily would make this deponent a present of at least one thousand dollars and possibly more. That after said contract was made the said Milton Daily did substitute such second hand machinery for a like quantity of new machinery, and appeared at various times at the city of

121 Jackson while the same was being installed and after it was installed. It was understood and agreed between this deponent and the said Milton Daily that this deponent was to refrain and abstain from communicating to the proper officer of the State of Michigan or to the Board of Control the fact of such substitution and to permit the said Hoover & Gamble Company and the said Milton Daily to retain the purchase price therefor. That said plant for the manufacture of twine and cordage commenced operations about the 17 day of March, 1908, and the contract price paid in full to said Hoover & Gamble Company. That thereafter and on or about the 13 day of May, 1908, the said Milton Daily as he had prior there to agreed to do paid this deponent the sum of fifteen hundred dollars.

And further deponent says not.

ALLEN N. ARMSTRONG.

Subscribed and sworn to before me this 19th day of May, A. D. 1909.

CASSIUS M. JENKS.

Police Judge, Jackson, Michigan."

122 Tenth. A certain certificate of George H. Townsend, Clerk of the County of Jackson in the State of Michigan and Clerk of the Circuit Court for said County of Jackson in the State of Michigan, which said certificate is in the words and figures following to wit:

"STATE OF MICHIGAN,

County of Jackson, ss:

I, George H. Townsend, Clerk of the County of Jackson and Clerk of the Circuit Court for said County which is a Court of record, do hereby certify, that Cassius M. Jenks, before whom the foregoing acknowledgments of the annexed application of Albert O. Reece, Prosecuting Attorney, and the annexed affidavits of Albert O. Reece, Prosecuting Attorney, and Jacob F. Strobel, Under Sheriff, and Allen N. Armstrong purport to have been taken was at the date of said acknowledgments Judge of the Police Court of the City of Jackson, county and state aforesaid, duly elected and qualified, and by law authorized to take such acknowledgements.

I do further certify, that I am well acquainted with the handwriting of said Cassius M. Jenks, Police Judge, and verily believe his signatures thereto are genuine and that said instruments were executed, acknowledged and sworn to according to the laws of this State.

I do further certify, that I have compared the foregoing copies of indictments and warrants against Milton Daily, for 123 the crime of bribery, and against Milton Daily and Andrew J. Eminger and Allen N. Armstrong, for the crime of obtaining ten thousand dollars in money by means of false pretences, with the originals of said indictments filed in the office of the County Clerk of Jackson County, State of Michigan, with the original warrants issued by the Honorable James A. Parkinson, Circuit Judge, of the Fourth Judicial Circuit of the State of Michigan, which said original indictments are now in my possession and custody by virtue of my office as Clerk of said Circuit Court, and the foregoing copies of said indictments and warrants are correct transcripts therefrom and of the whole of such originals.

In witness whereof, I hereunto set my hand and affix the seal of said County and State, at Jackson, Michigan, this nineteenth day of May, in the year one thousand nine hundred and nine.

[SEAL.]

GEORGE H. TOWNSEND, *Clerk.*"

124 Eleventh. A certain verification by Albert O. Reece, Prosecuting Attorney, which said verification is in the words and figures following, to wit:

"Verification by the Prosecuting Attorney.

STATE OF MICHIGAN,

County of Jackson, ss:

Albert O. Reece being duly sworn says he is Prosecuting Attorney for the County of Jackson, in said State; that he has read the above application by him signed, and believes all the statements therein made to be true, and that he also believes the accused party therein named to be now in the State of Illinois.

ALBERT O. REECE,
Prosecuting Attorney.

Subscribed and sworn to before me, this 19th day of May, 1909.

CASSIUS M. JENKS,
Police Judge.

125 Twelfth. A certain additional verification by the complaining party, which said additional verification is in the words and figures following, to wit:

"Additional Verification by the Complaining Party, in all Cases of Fraud, False Pretenses, Embezzlement and Forgery.

STATE OF MICHIGAN,
County of Jackson, ss:

Albert O. Reece being duly sworn says he is Prosecuting Attorney in the prosecutions instituted against Milton Daily, and against Milton Daily, Andrew J. Eminger and Allen N. Armstrong, and for trial upon which his surrender is sought on the above application, and that he has read said application, and believes all the statements therein made to be true. He further says he believes said accused to be now in the State of Illinois and that he desires his return only for the purposes of public justice, and not to give opportunity for the service of civil process or to compel him to settle or compromise any asserted debt or other private demand.

ALBERT O. REECE,
Prosecuting Attorney.

Subscribed and sworn to before me this 19th day of May, 1909.

CASSIUS M. JENKS,
Police Judge."

126 And said Milton Daily further answering said return states that, said "Indictment Exhibit A" and said "Indictment Exhibit B" were each returned into said Circuit Court for the County of Jackson in the State of Michigan on the first day of May in the year 1909.

And said Milton Daily in further answering said return states, that said requisition and said papers which accompanied and were annexed to said requisition do not contain any evidence whatever, competent or incompetent, which tends to prove that he, said Milton Daily, was corporeally within the State of Michigan at the time when it is averred in "indictment Exhibit A" that said alleged crime of bribery was committed, or at the time when it is stated in said affidavit of said Allen N. Armstrong that said Milton Daily (meaning the plaintiff in this Habeas Corpus proceeding) gave said Allen N. Armstrong the sum of fifteen hundred dollars, or at the time when, if ever, said alleged crime of bribery was committed, or at the time when it is averred in "Indictment Exhibit B" that said alleged crime of obtaining ten thousand dollars in money by false pretences was committed, or at the time when it is averred in

"Indictment Exhibit B" that the alleged false pretences stated in "Indictment Exhibit B" were made, or at the time when, if ever, said alleged crime of obtaining ten thousand dollars in money by false pretences was committed, or at the time when, if ever, said alleged false pretences were made.

And said Milton Daily in further answering said return states that he, said Milton Daily, was not in the State of Michigan on the first day of May in the year 1908 or on any day on or about said first day of May in the year 1908, or on the thirteenth day of May in the year 1908 or on any day on or about said thirteenth day of May in the year 1908.

And said Milton Daily further answering said return states that he, said Milton Daily, was in the State of Michigan on two or three different days in the year 1907 prior to the twenty-fourth day of June in the year 1907 (on which said twenty-fourth day of June in the — 1907 it is alleged in "Indictment Exhibit A" and in "Indictment Exhibit B" that a certain Act numbered 211 of the Public Acts of the State of Michigan took effect and became a law of the State of Michigan) and also on the twenty-second day of July in the year 1907 and on the fourteenth day of November in the year 1907, and also on the sixth and seventh days of April in the year 1908; that he, said Milton Daily, was not in the State of Michigan on any day in the year 1907 or on any day in the year 1908 except on said two or three different days prior to the said twenty-fourth day of June in the year 1907 and except on said twenty-second day of July in the year 1907 and on said fourteenth day of November, in the year 1907, and except on said sixth and seventh days of April in the year 1908, and that he, said Milton Daily, has not been in the State of Michigan on any day in the year 1909.

And said Milton Daily in further answering said return states that he, said Milton Daily, was not in the State of Michigan at the time when, if ever, said alleged crime of bribery was committed, or at the time when, if ever, said alleged crime of obtaining ten thousand dollars in money by false pretences was committed, or at the time when, if ever, said sum of fifteen hundred dollars was given to said Allen N. Armstrong, or at the time when, if ever, the alleged false pretences specified in "Indictment Exhibit B" were made, or at the time when, if ever, said sum of ten thousand dollars was obtained from the People of the State of Michigan, or at the time when, if ever, any one or more of the alleged corrupt agreements or understandings stated in "Indictment Exhibit A" or in "Indictment Exhibit B" or in said affidavit of said Allen N. Armstrong were entered into or made, or at the time or times when, if ever, anything was said or done in furtherance of or concerning any of said alleged corrupt agreements or understandings, or at the time when, if ever, said Milton Daily (meaning the plaintiff in this Habeas Corpus proceeding) as it is stated in said Allen N. Armstrong's affidavit "informed this deponent" (meaning said Allen N. Armstrong) "that he" (meaning said Allen N. Armstrong) "and the Board of Control of the Michigan State Prison at Jackson were making a mistake in purchasing all

new material as the Ayton machinery owned by said Milton Daily" (meaning the plaintiff in this Habeas Corpus proceeding) "was practically as good as new and that if this deponent" (meaning said Allen N. Armstrong) "would permit said Milton Daily" (meaning the plaintiff in this Habeas Corpus proceeding) "to substitute said Ayton machinery for an equal amount of new machinery in the event a contract was made for the purchase of new machinery for the manufacture of twine and cordage at said prison he, the said Milton Daily" (meaning the plaintiff in this habeas corpus proceeding) "would make this deponent" (meaning said Allen N. Armstrong) "a present of at least one thousand dollars and possibly more."

And the said Milton Daily in further answering said return states, that the facts and matters alleged in said "Indictment Exhibit A" do not constitute the crime of bribery or any other crime under the laws of the State of Michigan, and that the facts and matters alleged in "Indictment Exhibit B" do not constitute the crime of obtaining money by false pretences or any other crime under the laws of the State of Michigan.

And said Milton Daily in further answering said return states that he, said Milton Daily, was, on the twenty-fifth day of May in the year 1909 arrested and detained by said Christopher Strassheim on and by virtue of said extradition warrant issued by the Governor

of the State of Illinois in pursuance of said requisition of the
 130 Governor of the State of Michigan, and that after he was so arrested and detained on said twenty-fifth day of May, in the year 1909, and on said twenty-fifth day of May in the year 1909, he, said Milton Daily, sued out and obtained from Honorable William H. McSurely, Judge of the Superior Court of Cook County, in the State of Illinois, and ex-officio Judge of the Criminal Court of said Cook County, a writ of habeas corpus for the purpose of obtaining the release and discharge of him said Milton Daily, from said arrest and detention; that said writ of habeas corpus so issued by said Honorable William H. McSurely came on for hearing in said Criminal Court of Cook County before the Honorable Willard McEwen, a Judge of said Superior Court of Cook County in said State of Illinois and Ex-Officio Judge of said Criminal Court of Cook County, and that the said Honorable Willard M. McEwen on said hearing refused to discharge him, said Milton Daily, from said arrest and detention on said twenty-fifth day of May in the year 1909, and on the twenty-third day of June in the year 1909 ordered him, said Milton Daily, to be remanded to the custody of said Christopher Strassheim, Sheriff of said Cook County, to be by said Sheriff delivered to said Jacob F. Strobel, as Agent of the State of Michigan, to be by said Jacob F. Strobel, transported to the State of Michigan.

And said Milton Daily further shows that said writ of habeas corpus, so obtained by your petitioner from said Honorable
 131 William H. McSurely, and that said hearing upon said writ of habeas corpus before the said Honorable Willard M. McEwen, and that said order entered in said habeas corpus proceed-

ings, whereby he, the said Milton Daily, was remanded to the custody of the sheriff of said Cook County, to be, by said sheriff, delivered to said Jacob F. Strobel, as Agent of the State of Michigan, as aforesaid, exhaust all the remedies given and granted to him, said Milton Daily, under the laws of the State of Illinois for the purpose of seeking to obtain, or obtaining, the release and discharge of him, said Milton Daily, from said arrest and detention under and by virtue of said extradition warrant issued by the Governor of the State of Illinois in pursuance of said requisition of the Governor of the State of Michigan; and that under the laws of the State of Illinois an order by any Illinois Court or by any Judge of any Illinois Court in habeas corpus proceedings, remanding the petitioner in such proceedings to the custody of the officer by whom such petitioner is detained, is final, and that no appeal or writ of error lies, under the laws of the State of Illinois, from such order to any other court.

And said Milton Daily in further answering said return, states that the Governor of the State of Illinois did not have the jurisdiction and power to issue said extradition warrant, and that said extradition warrant is void and without authority of law, and that the custody, detention and restraint of said Milton Daily by said Christopher Strassheim, said sheriff, under and by virtue of said extradition warrant is in violation of the Constitution and laws of

132 the United States and of the State of Illinois because of the facts, matters and things hereinbefore stated, and more particularly for the following reasons:

(a) Because the facts and matters alleged in "Indictment Exhibit A" do not constitute the crime of bribery or any other crime under the laws of the State of Michigan.

(b) Because the facts and matters alleged in "Indictment Exhibit B" do not constitute the crime of obtaining money by false pretences or any other crime under the laws of the State of Michigan.

(b-1) Because it does not appear from the papers which accompanied and were annexed to said requisition that he, said Milton Daily, stands charged in the state of Michigan with the commission of any crime under the laws of the State of Michigan.

(c) Because it does not appear from what is stated in said requisition and in the said papers which accompanied and were annexed to said requisition that he, said Milton Daily, was corporeally within the State of Michigan on the day on which it is averred in "Indictment Exhibit A" that said alleged crime of bribery was committed, or on any day on which it is averred in "Indictment Exhibit B" that the said alleged crime of obtaining ten thousand dollars in money by false pretences was committed, or on the day on which it is averred in "Indictment Exhibit B" that said alleged false pretences stated in "Indictment Exhibit B" were made, or on the day of which it is stated in said affidavit of said Allen N. Armstrong that Milton Daily (meaning the plaintiff in this Habeas Corpus proceeding) gave said Allen N. Armstrong the sum of fifteen hundred dollars.

133 (d) Because it does not appear from what is stated in said requisition and in said papers which accompanied and were

annexed to said requisition that he, said Milton Daily, was a fugitive from the justice of the State of Michigan within the meaning of the Constitution and laws of the United States.

(e) Because it appears from all the facts and matters hereinbefore stated and alleged that he, said Milton Daily was not, at the time of the issuance of said extradition warrant, and is not now, a fugitive from the justice of the State of Michigan within the meaning of the Constitution and laws of the United States.

And said Milton Daily in further answering said return states, that the imprisonment and detention complained of by him, said Milton Daily, in the petition for said Writ of Habeas Corpus was solely by virtue of said extradition warrant issued by the Governor of the State of Illinois upon and in pursuance of the said requisition of and from the Governor of the State of Michigan.

All of which said matters and things in this answer contained the said Milton Daily is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and prays to be hence dismissed and discharged without further day.

MILTON DAILY

WILLIAM S. FORREST,

Counsel for said Milton Daily.

134 STATE OF ILLINOIS,
County of Cook, ss:

Milton Daily being first duly sworn upon his oath states that he is the Milton Daily in the foregoing answer mentioned and that he subscribed the foregoing answer, and that he has read the foregoing answer and knows the contents thereof, and that said answer is true of his own knowledge, in substance and in fact, except as to what is stated in said answer to be upon information and belief, and as to what is stated in said answer to be upon information and belief he believes the same to be true.

MILTON DAILY.

Subscribed and sworn to before me this 19th day of July, A. D. 1909.

B. C. BACHRACH. [NOTARIAL SEAL.]
Notary Public.

Endorsed: 10309. In the U. S. District Court, for the Northern District of Illinois. Eastern Division. Milton Daily vs. Christopher Strassheim, Sheriff, et al. Amended Answer to Return of Respondent. Filed in open court 12:40 P. M., October 16, '09. T. C. Mac-Millan, Clerk.

135 And afterwards to wit, on the 25th day of October A. D. 1909, the following order was had and entered of record, in said cause, to wit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

This matter coming on to be heard, come the parties by their attorneys and the hearing proceeds and during the examination of witnesses on behalf of the petitioner, the usual hour of adjournment having arrived, It is

Ordered by the Court that the further hearing herein be continued until tomorrow morning.

136 And afterwards to wit, on the 26th day of October, A. D. 1909, the following order was had and entered of record, in said cause, towit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

This being the day and hour to which the further hearing herein was on yesterday continued, come again the parties by their Attorneys and the hearing proceeds and the Court having heard the arguments of counsel to conclusion this cause is continued until November 2, 1909, for disposition.

137 And afterwards towit, on the 2nd day of November, A. D. 1909, the following order was had and entered of record, in said cause, towit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

Come the parties by their attorneys and on motion It is

Ordered by the court that this cause be continued until November 6, 1909, at 10:15 o'clock A. M.

138 And afterwards towit, on the 6th day of November, A. D. 1909, the following order was had and entered of record, in said cause, towit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

Come the parties by their attorneys and on motion It is

Ordered by the court that this cause be continued until November 9, 1909.

139 And afterwards towit, on the 10th day of November, A. D. 1909, the following order was had and entered of record, in said cause, towit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

Comes the petitioner by his attorney, comes also the respondent by his Attorney and on motion leave is given the respondent to file waiver of date and tender of testimony in support of return of respondent nunc pro tunc Oct. 25, 1909, and on motion leave is given petitioner to amend his amended answer on its face.

140 And afterwards to wit, on the 10th day of November A. D. 1909, the following order was had and entered of record, in said cause, to wit:

No. 10309.

MILTON DAILY

VS.

CHRISTOPHER STRASSHEIM, Sheriff of Cook County, in the State of Illinois.

Come into open court on this tenth day of November A. D. 1909, the said Milton Daily the petitioner by his counsel and the said Christopher Strassheim, Sheriff of Cook County in the State of Illinois, respondent herein, by his counsel, and this coming on to be heard upon the petition of said Milton Daily, for a Writ of Habeas Corpus and for an order of discharge of said Milton Daily from the custody, detention and restraint of said Christopher Strassheim, said Sheriff, under and by virtue of a certain extradition warrant issued on the Twenty-first day of May in the year 1909, by Charles S. Deneen, Governor of the State of Illinois, which said Extradition warrant recites that said Milton Daily is a fugitive from justice and has fled from the State of Michigan, and commands any sheriff, coroner or constable of any county in the State of Illinois, to arrest and secure the said fugitive, Milton Daily, and to deliver him into the custody of one Jacob F. Strobel, the agent of the executive authority of the State of Michigan, and upon the

141 writ of habeas corpus issued on said petition by this court and duly executed upon the said Christopher Strassheim, said Sheriff, in whose custody the petitioner, said Milton Daily, is detained and restrained of his liberty, and upon the return of said Christopher Strassheim, said Sheriff, to said writ of habeas corpus, a copy of said extradition warrant being annexed to and made a part of said return, and upon the amended answer and denial of said Milton Daily, the petitioner, to said return, and upon the production of the body of said Milton Daily, the petitioner, before this court by said Christopher Strassheim, said Sheriff, and the court having heard the oral testimony of witnesses sworn and examined in open court by and on behalf of said Milton Daily, the petitioner, and of said Christopher Strassheim, said Sheriff, and the court having also heard the documentary evidence produced in open court

on behalf of said Milton Daily, the petitioner, and the court having heard the arguments of counsel, and the court being fully advised in the premises, on consideration thereof doth find:

That said Milton Daily the petitioner, is now and was at the time of the issuance of said writ of habeas corpus, restrained of his liberty and detained in the custody of said Christopher Strassheim, said Sheriff, by said Christopher Strassheim, said Sheriff, under and by *by* virtue solely of said extradition warrant; that said Milton Daily, the petitioner, is not now and was not at the time of the issuance of the said extradition warrant a fugitive from the justice of the State of Michigan; and that the custody, detention and restraint of said Milton Daily by said Christopher Strassheim, said Sheriff, under and by virtue of said extradition warrant, is without authority of law and in violation of the Constitution and laws of the United States and of the laws of the State of Illinois; It is therefore

Considered and Ordered by this court that the said Milton Daily, the petitioner, be discharged from said custody, detention and restraint of said Christopher Strassheim, said Sheriff, under and by virtue of said extradition warrant.

And it further appearing to this court from the statements of counsel for said Christopher Strassheim, Sheriff, respondent herein made in open court, that said Christopher Strassheim, said Sheriff, intends to apply to this court for an appeal from this order of this court to the Supreme Court of the United States It is further

Ordered by this court that said Milton Daily be at once taken into the custody of the United States Marshal for this Northern District of Illinois, Eastern Division, to be by said Marshal safely kept until said appeal is prayed for and perfected or until the further order of this court.

143 And afterwards towit, on the 10th day of November, A. D. 1909, the following order was had and entered of record, in said cause, towit:

No. 10309.

MILTON DAILY

vs.

CHRISTOPHER STRASSHEIM, Sheriff of Cook County, Illinois, Respondent, et al.

On motion of John E. W. Wayman, State's Attorney of the County of Cook State of Illinois, Attorney and Counsel for respondent, it appearing to the court from the record and testimony in above cause the court hereby certifies that there exists probable cause for the allowance of an appeal by respondent, Wherefore it is

Considered and Ordered that an appeal to the Supreme Court of the United States from the judgment and order of discharge heretofore filed and entered herein, be and the same is hereby allowed, and that a certified copy of the entire record including the petition, writ of habeas corpus, demurrer to the petition, return of respond-

ent, answer and amended answer of relator, affidavits, oral testimony, opinion of the court overruling demurrer to answer and opinion of the court on the hearing, exhibits, and other proceedings herein be transmitted to said Supreme Court of the United States immediately upon the execution of the bond next herein after provided for, and within thirty days from the date of

144 the entry hereof. It is further

Ordered that respondent furnish a bond on appeal in the sum of Three Hundred Dollars with good and sufficient security, the same to act as a supersedeas bond and also as bond for costs and damages on appeal. It is further

Ordered that pending the determination of the appeal here and now allowed the plaintiff, Milton Daily, shall be enlarged upon recognizance upon the sum of Twenty-five Hundred Dollars, with good and sufficient surety to answer and abide the judgment of said Supreme Court of the United States, said recognizance to be approved by the Clerk of this Court and to be deposited in the office of said Clerk.

145 And afterwards to wit, on the 10th day of November, 1909, there was filed in the Clerk's office of said Court, in said cause, an Assignment of Errors, same being in words and figures following to wit:

UNITED STATES OF AMERICA:

In the District Court of the United States for the Northern District of Illinois.

MILTON DAILY

vs.

CHRISTOPHER STRASSHEIM, Sheriff of Cook County, Illinois.

Comes into court on this 10th day of November, A. D. 1909, the said Christopher Strassheim, respondent in the above entitled cause, and with his petition for an appeal of the above entitled cause to the Supreme Court of the United States, assigns error in the proceedings as follows:

First. That the court erred in ordering the discharge of said petitioner in said proceedings because the Criminal Court of Cook County, State of Illinois, a court of co-ordinate jurisdiction, had jurisdiction of said cause and of the matters at issue therein, and no appeal from the decision of said Criminal Court of Cook County had been taken to the Supreme Court of the United States and no writ of error had been applied for from said court to review said cause.

Second. That the court erred in determining that the said petitioner, Milton Daily, was not a fugitive from the justice of the State of Michigan.

Third. That the court erred in its order discharging petitioner

146 from custody because, under the Constitution of the United States and the Statute of the United States in conformity therewith, said petitioner was upon the face of said proceedings charged with an offense against the laws of the State of Michigan, and was a fugitive from the justice of said state.

Fourth. Because the court erred in his ruling and determination that the said petitioner was not charged with the crime of obtaining money under false pretenses and in refusing to consider said charge and the presence of said Milton Daily in Michigan in connection therewith in determining the question of the legality of said petitioner's custody by said respondent as set forth in his return made to the petition in this cause.

Fifth. That the court erred in his determination that the presence of petitioner in the State of Michigan as shown by the record in said cause and by the testimony produced at the hearing thereof, was not for the purpose of committing an offense against the laws of said state and was not within the purview of the indictment upon which the arrest of said petitioner was *basde* and his extradition from said state of Illinois to the State of Michigan sought.

Sixth. That the court erred in overruling the demurrer filed by Respondent to the answer and amended answer of the Relator.

Seventh. That the court erred in determining that it was the duty and thereby compelled the Respondent to present oral testimony in support of the return to prove that Relator committed an overt act in the State of Michigan in the perpetration of the crime charged in the indictments and affidavit certified in the return of Respondent.

J. E. W. WAYMAN.
ALBERT O. REECE.
CHARLES W. MCGILL.
THOMAS E. BARKWORTH.

147 Endorsed: 10309. In the District Court of the United States. In re Milton Daily vs. Christopher Strassheim. Assignment of Errors. Filed Nov. 10, 1909. T. C. MacMillan, Clerk. John E. W. Wayman.

148 And afterwards to wit, on the 10 day of November A. D. 1909, there was filed in the Clerk's office of said Court, in said cause, Petition for Appeal, same being in the words and figures following.

149 UNITED STATES OF AMERICA :

In the District Court of United States for the Northern District of Illinois, October Term of said Court, A. D. 1909.

No. 10309.

MILTON DAILY

vs.

CHRISTOPHER STRASSHEIM, Sheriff of Cook County, Illinois, Respondent, et al.

Habeas Corpus.

Petition for Appeal.

Christopher Strassheim, Sheriff of Cook County, respondent in the above entitled cause, feeling himself aggrieved by the judgment and order of discharge, by this Honorable Court entered on the 10th day of November, A. D. 1909, wherein and whereby the said Milton Daily, plaintiff, was discharged from the caption, detention and custody of this respondent so held by virtue of the authority certified in respondent's return in above cause, comes now by John E. W. Wayman, State's Attorney of the County of Cook, State of Illinois, Thomas E. Barkworth, Albert O. Reece, and Charles W. McGill, his attorneys, and appeals from said judgment and order of discharge to the Supreme Court of the United States for reasons more fully set forth in the assignment of errors filed in this cause herewith, and prays that the appeal be allowed and that a transcript of the entire record including the petition for writ of habeas corpus, the demurrer of respondent, return of respondent, the amended answer of plaintiff, oral evidence presented by both relator and respondent, and all papers and proceedings in said cause, upon which the said judgment and order of discharge was made, duly
150 authenticated, may be sent to the Supreme Court of the United States.

Also, this respondent petitions this Honorable Court for and order certifying that there exists probable cause for an appeal, and allowing this respondent to prosecute an appeal to the honorable Supreme Court of the United States, under and according to the laws of the United States in that case made and provided.

Also that an order be made fixing the amount of security which respondent shall give and furnish upon said appeal, and that upon the giving of said security all further proceedings in this court be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

Also that an order be made directing that pending the determination of said appeal by the said Supreme Court of the United States the plaintiff be enlarged upon recognizance in an amount to be fixed by this Honorable Court to answer the judgment of the said Supreme Court of the United States, and for such other orders

and process as may cause the judgment in above cause to be presented for correction to the said Supreme Court of the United States.

Dated this 10th day of November, A. D. 1909.

J. E. W. WAYMAN,
ALBERT O. REECE,
CHARLES W. MCGILL,
Attorneys for Respondent.

Allowed:

KENESAW M. LANDIS.

Endorsed: 10309. In re Pet. of Milton Daily for writ of habeas corpus. Petition for Appeal. Filed Nov. 10, 1909. T. C. Mac-Millan, Clerk.

151 And afterwards to wit, on the 1st day of March A. D. 1910, there was filed in the Clerk's office of said Court, in said cause, an Appeal Bond, same being in words and figures following to wit:

In the District Court of Illinois, Northern District of Illinois.

No. 10309.

MILTON DAILY

vs.

CHRISTOPHER STRASSHEIM, Sheriff.

Writ of Habeas Corpus.

Appeal Bond.

Know all men by these presents, That we, Christopher Strassheim, Sheriff of Cook County in the State of Illinois, respondent in the above entitled cause as principal, and the Fidelity and Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland, as surety, are held and firmly bound unto Milton Daily, plaintiff, in the penal sum of \$300 lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally, and firmly, by these presents;

Witness our hands and seals, this first day of March, A. D. 1910.

The condition of the above obligation is such, That Whereas, by order of the District Court of the United States for the Northern District of Illinois, entered on the 10th day of November A. D. 1909, in the said District Court of the United States, and of the March term of the said Court A. D. 1910, the said Milton Daily,

152 plaintiff in the above entitled cause, was discharged from the detention and custody of Christopher Strassheim, Sheriff of Cook County, in the State of Illinois, respondent in above cause, from which said judgment and order of discharge so entered by the said District Court of the United States for the Northern District of Illi-

nois, *this* said Christopher Strassheim, Sheriff of Cook County in the State of Illinois, has prayed for, and obtained an appeal to the Supreme Court of the United States;

Now therefore, If the said Christopher Strassheim, sheriff of Cook County, in the State of Illinois, respondent above named shall duly prosecute his said appeal with effect, and moreover pay the amount of the judgment, costs and damages, rendered and to be rendered against him as said respondent, in case the said judgment shall be affirmed in said Supreme Court of the United States, then the above obligations to be void, otherwise in full force and effect.

CHRISTOPHER STRASSHEIM. [SEAL.]
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND.

By WILLIAM G. KRESS. [SEAL.]
Agent and Attorney in Fact.

[SEAL.]

Taken and entered into before me, at my office, in the city of Chicago, in the state of Illinois, in the Northern District of Illinois, this first day of March, A. D. 1910.

[SEAL OF COURT.]

K. M. LANDIS.

Endorsed: 10309. Milton Daily vs. Chris. Strassheim. Appeal Bond. Filed March 1, 1910. T. C. MacMillan, Clerk.

153 And afterwards to wit, on the 10th day of November, A. D. 1909, there was filed in the Clerk's office of said Court, in said cause, a Bond, same being in words and figures following.

154 Know all men by these presents, that I, Milton Daily, of the City of Chicago, State of Illinois, as principal, and Frederick J. Fadner, of Chicago, State of Illinois, as surety, are held and firmly bound unto the United States of America in the full and just sum of Twenty Five Hundred Dollars, to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Witness our hands and seals this 10th day of November in the year of our Lord one thousand nine hundred and nine.

MILTON DAILY. [SEAL.]
FREDERICK J. FADNER. [SEAL.]

Whereas on the 10th day of November, A. D. 1909, at the July Term of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a certain cause, No. 10,309, lately pending in said District Court, wherein said Milton Daily was petitioner and Christopher Strassheim, Sheriff of Cook County in the State of Illinois, was respondent, and order and judgment were entered in said cause in favor of said Milton Daily and discharging said Milton Daily from the custody, detention and restraint of said Christopher Strassheim, said Sheriff, under and by virtue of a certain extradition warrant issued by the Governor of the State of Illinois on the twenty-first day of May in the year 1909, which

extradition warrant commanded any sheriff, coroner or constable of any county in the state of Illinois to arrest and secure the said Milton Daily and to deliver him into the custody of one Jacob F. Strobel, the agent of the Executive authority of the State of Michigan; and

Whereas said Christopher Strassheim, said sheriff, has
155 prayed and been allowed and perfected an appeal from said order and judgment of said District Court to the Supreme Court of the United States to reverse the order and judgment of said District Court in said cause No. 10,309.

Now the condition of said obligation is such that if the said Milton Daily shall appear before the Supreme Court of the United States whenever and wherever ordered so to do by this District Court, or by the Supreme Court of the United States and shall abide by and perform the order and judgment made and entered by the Supreme Court of the United States in said cause, and shall surrender himself in execution of the order and judgment of the Supreme Court of the United States, if the order and judgment made and entered in favor of him, said Milton Daily, in said District Court, shall be reversed by the Supreme Court of the United States, then the above obligation to be void; otherwise to remain in full force and effect.

Approved:

T. C. MACMILLAN,

*Clerk of the District Court of the United States for
the Northern District of Illinois, Eastern Division.*

Endorsed: Gen. No. 10309. In the U. S. Dist. Court. Milton Daily vs. Christopher Strassheim. Bond. Filed Nov. 10, 1909 T. C. MacMillan, Clerk.

156 And afterwards towit, on the 8th day of December, A. D. 1909, the following order was had and entered of record in said cause, towit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

Comes the respondent by his attorney and on his motion It is

Ordered by the court that the time to file bill of exceptions and bond on appeal be and the same hereby is extended to Jan. 10, 1910.

157 And afterwards towit, on the 6th day of January, A. D. 1910, the following order was had and entered of record in said cause, towit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

Comes the respondent by his attorney and on his motion and by stipulation of parties, It is

Ordered by the Court that the time to file a bill of exceptions and bond be and the same hereby is extended to January 25, 1910.

158 And afterwards to wit, on the 24th day of January A. D. 1910, the following order was had and entered of record in said cause, towit:

No. 10309.

In re Petition of MILTON DAILY for Writ of Habeas Corpus.

Comes the respondent by his attorney and on his motion and by stipulation of the parties hereto It is

Ordered by the court that the time to file a bill of exceptions and bond herein be and the same hereby is extended to March 1, 1910.

159 And afterwards, to wit, on the 1st day of March, A. D. 1910, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Bill of Exceptions, same being in the words and figures following, to wit:

160 10309.

STATE OF ILLINOIS,
County of Cook, ss:

In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 10309.

MILTON DAILY

vs.

CHRISTOPHER STRASSHEIM, Sheriff.

Writ of Habeas Corpus.

Bill of Exceptions.

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Filed March 1, 1910, at — o'clock — m.

T. C. MACMILLAN, Clerk.

S.

161 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 10309.

MILTON DAILY

vs.

CHRISTOPHER STRASSHEIM, Sheriff.

Writ of Habeas Corpus.

Bill of Exceptions.

Be it remembered that heretofore, to-wit, on the 25th day of October, A. D. 1909, the same being one of the days of the July Term A. D. 1909 of the United States District Court for the Northern District of Illinois, Eastern Division, the above entitled cause came on for hearing and the following proceedings were had and the following evidence given in said cause in said court, before the Honorable Kenesaw M. Landis, a Judge of said District Court, in room numbered 603 Federal Building, in the City of Chicago and the State of Illinois.

162 Appearances:

Mr. William S. Forrest, appearing on behalf of the petitioner, Milton Daily;

Mr. Thomas Barkworth, William McGill, Albert O. Reece, and F. L. Barnett, appearing on behalf of respondent, Christopher Strassheim.

Whereupon the petitioner, Milton Daily, to maintain the issues on his part, introduced the following evidence, that is to say:

Mr. WILLIAM S. FORREST: If The Court please, on October 16th, and just before this court adjourned, I moved for leave to file an amended answer in this cause. Your Honor asked counsel for respondent whether there was any objection to the filing of said amended answer, and counsel for respondent replied that there was no objection to the filing of said amended answer if it did not contain any new matter, and Your Honor then and there directed the clerk to file said amended answer if we, the counsel in said cause, agreed among ourselves that there was no new matter in it. After Your Honor left the court room we, the opposing counsel in this case, agreed among ourselves that there was no new matter

163 in said amended answer and, by consent of all the parties, it was filed. On behalf of Milton Daily I offer in evidence the following document marked "Daily's Exhibit Requisition Papers", which document is a certified copy of the requisition from the Governor of the State of Michigan to the Governor of the State of Illinois for the extradition of Milton Daily, the petitioner in this case, together with all papers accompanying said requisition. Said certified

copy is certified to by James A. Rose, Secretary of the State of Illinois, under the great seal of the State of Illinois.

Mr. THOMAS BARKWORTH: There is no objection to the reception of said document in evidence.

Whereupon said document, so marked, "Daily's Exhibit Requisition Papers" was then and there read in evidence, and is in the words and figures following, to-wit:

164 "DAILY'S EXHIBIT REQUISITION PAPERS."

"STATE OF ILLINOIS,
Department of State:

James A. Rose, Secretary of State, to all to whom these presents shall come, Greeting:

I, James A. Rose, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true copy of the Requisition from the Governor of the State of Michigan on the Governor of the State of Illinois for the extradition of one Milton Daily, together with all papers accompanying said Requisition, the original of which is now on file and a matter of record in this office.

In testimony whereof, I hereto set my hand and cause to be affixed the great Seal of State.

Done at the City of Springfield this 24th day of May, A. D. 1909.

[SEAL.]

JAMES A. ROSE,
Secretary of State."

To which certificate was affixed the great Seal of the State of Illinois, bearing, among other things, the following legend—to wit: Seal of the State of Illinois, Aug. 26th, 1818.

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STATE OF MICHIGAN,
EXECUTIVE DEPARTMENT.

Fred M. Warner, Governor in and over the State of Michigan, to the Governor of the State of Illinois:

Whereas, It appears by Indictments and Warrants which are hereunto annexed, and which I certify to be authentic and duly authenticated, in accordance with the laws of this State, that Milton Daily stands charged with the crime of bribery and obtaining ten thousand dollars in money by false pretenses which I certify to be a crime under the laws of this State, committed in the County of Jackson in this State, and it having been represented to be that he has fled from the justice of this State and may have taken refuge in the State of Illinois.

Now therefore, Pursuant to the provisions of the Constitution and the Laws of the United States, in such cases made and provided, I do hereby require that the said Milton Daily be apprehended and delivered to Jacob F. Strobel, who is hereby authorized to receive

166 and convey him to the State of Michigan, there to be dealt with according to law. The State to be liable for no expense incurred in the pursuit and arrest of said fugitive.

In witness whereof, I have hereunto set my hand, and caused the Great Seal of the State to be affixed at Lansing, this nineteenth day of May in the year of our Lord one thousand nine hundred and nine and of the Independence of the United States of America the one hundred and thirty-third.

[SEAL.]

FRED M. WARNER.

By the Governor:

FREDERICK C. MARTINDALE,
Secretary of State.

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STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
LANSING, May 19th, 1909.

SIR: After having carefully examined the annexed application for requisition for Milton Daily, and the accompanying papers thereto attached, I respectively submit that, in my opinion, such application is in due form, and complies with all the requirements of law, and that you may properly grant the same.

HENRY E. CHASE,
Deputy Attorney General.

To His Excellency, the Governor.

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Application for Requisition.

Interstate.

To Fred M. Warner, Governor in and over the State of Michigan:

The undersigned, Prosecuting Attorney for the County of Jackson in said State, respectfully applies for a requisition upon the Governor of the State of Illinois for the arrest and rendition of Milton Daily late of said County, and therein charged in due form of law with the crime of bribery and obtaining ten thousand dollars in money by false pretenses. The undersigned designates Jacob F. Strobel to receive such requisition, and certifies that the said Jacob F. Strobel agent, has no private interest in the arrest of such fugitive, and is a proper person for such agency.

The undersigned further certifies, that in his opinion the ends of public justice require that the said Milton Daily alleged criminal, be brought to this State for trial at the public expense; that he believes he has sufficient evidence to secure his conviction; that this application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted the criminal proceedings shall not be used for any of said objects; and this is the first application that has been made for a requisition for said

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Milton Daily for the offense named or on any charge arising out of the same facts.

Accompanying this application are duly certified copies of proofs on which the indictments and warrants against the said Milton Daily was filed and also a certified copy of said indictments and warrants also of affidavits showing the connection of said Milton Daily with the above crime and his presence in this State at the time such offense was committed, and of his having been found in the State of Illinois where now supposed to be.

Dated May 19th, A. D. 1909.

ALBERT O. REECE,
Prosecuting Attorney of Jackson County.

Reference is hereby made to statutes of Michigan bearing upon the alleged offense. C. L. of 1897, Sec. 11311 and 11575.

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STATE OF MICHIGAN,
DEPARTMENT OF STATE.

I, Frederick C. Martindale, Secretary of State of the State of Michigan, and custodian of the Great Seal of the State, hereby certify that James A. Parkinson whose official attestation appears upon the annexed instrument, was, at the date of the attestation thereof, Circuit Judge in and for the County of Jackson, in said State, duly elected and qualified, and authorized by the laws of this State to make such attestations; that to all his official acts as such Circuit Judge full faith and credit ought to be given in all Courts of Justice and elsewhere; that said instrument is executed and acknowledged in conformity to the laws of this State; and that said attestation is in due form and by the proper officer, whose signature thereto I verily believe to be genuine.

In witness whereof, I have hereto affixed my signature and the Great Seal of the State, at Lansing, this nineteenth day of May, in the year of our Lord nineteen hundred nine.

[SEAL.]

FREDERICK C. MARTINDALE,
Secretary of State.

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STATE OF MICHIGAN,
DEPARTMENT OF STATE.

I, Frederick C. Martindale, Secretary of State of the State of Michigan and custodian of the Great Seal of the State, hereby certify that Albert O. Reece, whose official attestation appears upon the annexed instrument, was, at the date of the attestation thereof, Prosecuting Attorney in and for the County of Jackson, in said State, duly elected and qualified, and authorized by the laws of this State to make such attestations; that to all his official acts as such Prosecuting Attorney full faith and credit ought to be given in all Courts of Justice and elsewhere; that said instrument is executed and acknowledged in conformity to the laws of this State; and that said attestation is in due form and by the proper officer, whose signature thereto I verily believe to be genuine.

In witness whereof, I have hereto affixed my signature and the

Great Seal of the State, at Lansing, this nineteenth day of May in the year of Our Lord nineteen hundred nine.

[SEAL.]

FREDERICK C. MARTINDALE,

Secretary of State.

172

STATE OF MICHIGAN,

DEPARTMENT OF STATE.

I, Frederick C. Martindale, Secretary of State of the State of Michigan, and custodian of the Great Seal of the State, hereby certify that George H. Townsend whose official attestation appears upon the annexed instrument, was, at the date of the attestation thereof, County Clerk in and for the County of Jackson, in said State, duly elected and qualified, and authorized by the laws of this State to make such attestations; that to all his official acts as such County Clerk full faith and credit ought to be given in all Courts of Justice and elsewhere; that said instrument is executed and acknowledged in conformity to the Laws of this State; and that said attestation is in due form and by the proper officer, whose signature thereto I verily believe to be genuine.

In witness whereof, I have hereto affixed my signature and the Great Seal of the State, at Lansing, this nineteen day of May in the year of our Lord nineteen hundred nine.

[SEAL.]

FREDERICK C. MARTINDALE,

Secretary of State.

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Copy.

STATE OF MICHIGAN,

County of Jackson, ss:

The Circuit Court of the County of Jackson, at the March Term, A. D. 1909.

The grand jurors of the said State of Michigan, in and for said County of Jackson, and enquiring in and for the body of said said County, upon their oath, do present that:

Heretofore, to-wit: One the first day of June, A. D. 1907, and from thence hitherto one Allen N. Armstrong was an executive officer of said State of Michigan, to-wit: Warden of the Michigan State Prison at Jackson in said State and was duly appointed, qualified and acting as such warden and was then and there, under the provisions of Act number two hundred and eleven of the Public Acts of the year 1907, authorized and empowered, in connection with the board of control of said State prison at Jackson to purchase the necessary machinery for the equipment of a twine and cordage plant in said prison and then and there was empowered to act, vote, judge and decide on the matter of such purchase in his, the said Allen N. Armstrong's, official capacity as warden of said prison as aforesaid, and one Milton Daily, late of the city of Chicago, State of Illinois, then and there being interested as a bidder for the equipment of said plant and the furnishing of machinery there-

174 for, both in his, the said Milton Daily's individual capacity, and as sales agent for the Hoover & Gamble Company, a

corporation of the State of Ohio, located at Miamisburg, Ohio, and having theretofore entered into a contract with the said State of Michigan, acting through the said Allen N. Armstrong as warden and the board of control of the Michigan State Prison for the sale by the said Hoover & Gamble Company to the said State of Michigan of certain machinery and equipment for the said twine and cordage plant, under which said contract said Hoover & Gamble Company had agreed and were bound to furnish such new machinery for use therein as in said contract provided, and said Milton Daily having theretofore corruptly agreed with said Allen N. Armstrong, as such warden, that in place of such new machinery, so contracted to be furnished by said Hoover & Gamble Company, certain second-hand, used and worn machinery, previously to and at that time owned by the said Milton Daily, should be fraudulently substituted for such new machinery so contracted to be furnished by said Hoover & Gamble Company, and said worn, used, and second-hand machinery, having been prior to said date so substituted with the knowledge

and consent of said Allen N. Armstrong under such corrupt agreement with said Milton Daily, the said Milton Daily then and there, well knowing the premises and the official capacity in which said Allen N. Armstrong was then and there acting and the authority and power of the said Allen N. Armstrong in the premises, did, on to-wit: The 13th day of May, 1908, at the city of Jackson, in said county of Jackson, corruptly give to the said Allen N. Armstrong, then and there acting as such executive officer, as aforesaid, a gift or gratuity, to-wit: Fifteen hundred dollars of the lawful money of the United States with the intent then and there to influence said Allen N. Armstrong in his action as said warden of the State prison as aforesaid to acquiesce in and agree to the said fraudulent substitution of said used, worn, and second-hand machinery and to refrain and abstain from communicating to the proper officers of said State and said board of control the fact of such substitution and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of the moneys prior to that time had and received from said State of Michigan as the purchase price of said machinery and the equipment so fraudulently delivered under said contract, all of which said acts were in violation of his duty as warden of said State prison as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

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Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to-wit: on the first day of June, 1907, and from thence hitherto one Allen N. Armstrong was an executive officer of the said State of Michigan, to-wit: warden of the Michigan State Prison at Jackson in said State and was duly appointed, qualified and acting as such warden and was then and there, under the provision of act number two hundred and eleven of the Public Acts of the year 1907, authorized and empowered, in connection with the board of control of said State prison at Jackson, to purchase for said

State of Michigan the necessary machinery for the equipment of a twine and cordage plant in said prison and was then and there by said act empowered and authorized to act, vote and decide in his, the said Allen N. Armstrong's official capacity as warden of said State prison as aforesaid on the matter of such purchase, its kind and character, and the acceptance of bids for the furnishing and sale to the State of Michigan of such machinery, and one Milton Daily, late of the city of Chicago, State of Illinois, then and there being interested as a bidder for the furnishing and sale of such equipment of said plant to said State of Michigan and the furnishing of machinery therefor, both in his, the said Milton Daily's individual capacity and

as sales agent for the Hoover & Gamble Company, a corporation of the State of Ohio, located at Miamisburg, Ohio, said Milton Daily being desirous of entering into a contract with said State of Michigan acting through the said Allen N. Armstrong as warden and the board of control of the Michigan State Prison, for the sale by said Hoover & Gamble Company and said Milton Daily to the said State of Michigan of certain machinery and equipment for the said twine and cordage plant, and then and there knowing that said board of control desired and intended to purchase new machinery for the equipment of said twine and cordage plant and that said board did not desire or intend to contract for or purchase used, worn and second-hand machinery therefor, the said Milton Daily, well knowing the premises and that the action, vote, judgment and decision of said Allen N. Armstrong, in his official capacity as warden of said prison as aforesaid, was, under authority of law, essential to the completion of said purchase, and well knowing that said board of control did not desire or intend to purchase said second-hand, used and worn machinery, did, on to-wit: The 22nd day of July, 1907, by corrupt and fraudulent agreement with the said Allen N. Armstrong, submit to the said board of control and said Allen N. Armstrong, as warden, a certain bid and offer in writing to sell to said State of Michigan certain machinery at a certain specified price therefor, to-wit: twenty-nine thousand six hundred

and eighty dollars, said offer containing the provision that said machinery should be all new machinery, and having then and there by corrupt agreement with said Allen N. Armstrong induced the said Allen N. Armstrong to consent to substitute for certain of said new machines so agreed to be furnished certain other worn, used and second-hand machinery of like description, to-wit: one coarse breaker, one special breaker and spreader, one regular spreader, three drawing frames, coarse, medium, and fine, two finishing drawing frames, four two-spindle balling machines, one layer or tie cord machine, one tow picker, twenty-eight double flyer spinners, two geared spinners, and one tow card, which said second-hand, used, and worn machinery it was corruptly agreed should be furnished by said Milton Daily in place and stead of the new machinery so described above in said bid and offer, and having through such corrupt agreement with said Allen N. Armstrong secured the acceptance of said second-hand, used and worn machinery by said Armstrong and said board of control, said board being in ignorance of such proposed

substitution of said second-hand, used and worn machinery for such new machinery, and said Milton Daily, acting through and in conjunction with said Hoover & Gamble Company, having thereafter furnished to the said State of Michigan and to said Allen N.

179 Armstrong as warden of said State prison, and installed in said twine and cordage plant such second-hand, worn and used machinery, through and in conjunction with said Hoover & Gamble Company, and having received therefor full payment from said State of Michigan at the prices fixed in said contract for said machinery as new said Milton Daily, well knowing the premises, did thereafter, to-wit: on the 13th day of May, 1908, at the city of Jackson in said county of Jackson, corruptly give to the said Allen N. Armstrong, then and there acting as such executive officer and warden, as aforesaid, a gift or gratuity, to-wit: fifteen hundred dollars of lawful money of the United States, with the intent then and there to influence said Allen N. Armstrong in his action in his official capacity as warden of said state prison as aforesaid to continue his consent to the furnishing and acceptance of said second-hand, used and worn machinery so substituted as aforesaid, as a compliance with said contract, and to refrain and abstain from communicating to the proper officers of said State or to said board of control the fact of such substitution and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of the moneys so received by them and each of them from said State of Michigan as the purchase price of said machinery and equipment so contracted to be furnished by the said Milton Daily and said Hoover & Gamble Company in accordance with the bid and offer and contract before set forth, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to-wit: on the 13th day of May, 1908 one Allen N. Armstrong, then and there being an executive officer of said State of Michigan, to-wit: warden of the Michigan State Prison at Jackson in said State, duly appointed, qualified and acting in that capacity, and then and there being charged, empowered and authorized by law to purchase, in conjunction with the board of control of the said state prison, certain machinery and equipment for the twine and cordage plant at said state prison, duly authorized and established by law, and then and there being charged with the duty of accepting the machinery so purchased and installed, and having theretofore fraudulently and corruptly accepted certain machinery sold to said State of Michigan by one Milton Daily, late of the city of Chicago, State of Illinois, which said machinery was not in accordance with the offer and bid of said Milton Daily, previously made to said Allen N. Armstrong, as such warden, and said board of control, and the contract therefor executed in accordance with

181 said offer and bid, said contract having been made with the Hoover & Gamble Company, a corporation organized

under the laws of the State of Ohio and having its principal office at Miamisburg, Ohio, but purporting to be made in accordance with and for the purpose of carrying out the bid and offer of said Milton Daily, said machinery so accepted not being in compliance with the said bid so submitted nor with the contract so made as aforesaid, and the moneys had and received as the purchase price for said machinery under said bid and said contract having been fraudulently and corruptly received and taken by said Milton Daily and said Hoover & Gamble Company, and the fraud and corruption with respect thereto being unknown to said board of control of said State prison and to said State of Michigan and the people thereof, all of which said premises were well known to the said Milton Daily, he, the said Milton Daily, did, on the date aforesaid, at the city of Jackson in said county, corruptly give to the said Allen N. Armstrong, a gift or gratuity, to-wit: the sum of fifteen hundred dollars of lawful money of the United States with intent then and there to influence the act, vote, opinion, decision and judgment of the said Allen N. Armstrong, then and there acting in his official capacity as warden of

182 said state prison, and in violation of his duty in the premises to permit the said Hoover & Gamble Company and the said Milton Daily to retain the purchase price of the machinery so corruptly furnished and the moneys so fraudulently and corruptly received by them and to refrain and abstain from demanding the fulfillment of said contract by the said Milton Daily and the said Hoover & Gamble Company by the furnishing and installation of the new machinery required by said bid and offer and by the terms of said contract, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

Fourth Count.

The grand jurors aforesaid, upon their oath aforesaid, do further present that:

Heretofore, to-wit: on the first day of June, 1907, and from thence hitherto one Allen N. Armstrong was an executive officer of said State of Michigan, to-wit: warden of the Michigan State Prison at Jackson, in the city of Jackson, in said State, and was duly appointed, qualified and acting as such warden of said prison.

That thereafter and heretofore, to-wit: on the 24th day of June, 1907, Act two hundred and eleven of the Public Acts of the State of Michigan for the year 1907, entitled: "An Act to provide for the installation, maintenance, equipment and operation of a twine and cordage plant to be operated by prison labor at the State
183 Prison at Jackson, Michigan, to provide for the sale and disposition of the manufactured product; to define the duties of the warden and board of control of said prison in relation thereto; to make an appropriation for the fiscal year ending June thirty, nineteen hundred eight, to carry into effect the object and purposes of this bill and to provide a tax to meet the same," took effect and became a law of said State, which said act empowered, authorized and directed the said Allen N. Armstrong, as warden of the Michigan

State Prison at Jackson, and the board of control of said Michigan state prison at Jackson, for and in behalf of said State of Michigan, to install, maintain, equip and operate a twine and cordage plant at said Michigan State prison and to purchase the necessary machinery for the manufacture of twine and cordage at said prison, the said Allen N. Armstrong, as said warden, then and there being authorized and empowered to act, vote and decide in his, the said Allen N. Armstrong's official capacity as said warden as aforesaid, in the matter of such purchase, the kind and character, and the acceptance of bids for the furnishing and sale to the said State of Michigan of such machinery for the manufacture of twine and cordage, all of which said matters and things were required by law to come
184 before the said Allen N. Armstrong as said warden in his official capacity.

That thereafter and heretofore to-wit: on the 19th day of July, 1907, one Milton Daily, late of the city of Chicago, State of Illinois, then and there being interested as a bidder for the equipment of said twine and cordage plant and the furnishing of the necessary machinery therefor, both in his, the said Milton Daily's, individual capacity and also as sales agent for the Hoover & Gamble Company, a corporation organized and existing under the laws of the State of Ohio, with its principal office located at Miamisburg, Ohio, submitted in writing his, the said Milton Daily's, bid for all new machinery necessary for the said equipment of said twine and cordage plant to the said Allen N. Armstrong as said warden of the Michigan state prison at Jackson in his official capacity as such warden, which said bid of the said Milton Daily was in words and figures as follows:

"CHICAGO, ILL., July 19th, 1907.

Mr. A. N. Armstrong, Warden, Jackson, Mich.

DEAR SIR: Complying with your request to quote on 120 spindle twine system, all new machinery to be manufactured by the Hoover and Gamble Company, I herewith submit as per their prices to me, the following:

185	1 #1 Breaker	\$1200.00
	1 #2 Breaker	1200.00
	1 Special Breaker and Spreader.....	1150.00
	2 Spreaders (Regular) at \$1050 each.....	2100.00
	3 Drawing Frames Coarse, Medium & Fine at \$550 ea... ..	1650.00
	3 Finishers " " " " at \$550 ea... ..	1650.00
	60 Double Flyer Spinning Jennies at \$260 each.....	15600.00
	1 Duster and Cleaner.....	350.00
	1 Tow Picker	400.00
	1 Tow Card	950.00
	1 Tensile Strength Testing Machine.....	110.00
	1 Twine Reel	75.00
	3 Bell Ringers at \$25 each.....	75.00
	7 Balling Machines of 2 Spindles, 3 of 3 Spindles....	1745.00
	1 24 Thread Rope Machine.....	850.00

\$29105.00

Yours very truly,

MILTON DAILY.

Terms, Cash for each shipment upon receipt of bill and B/L until 75% is paid for, balance of 25% when machinery is put in operation and fulfills warranty. Time to complete six months."

That thereafter and heretofore, to-wit: on the 22nd day of July, 1907, the said bid of the said Milton Daily was duly considered and accepted by the said Allen N. Armstrong as said warden of 186 the Michigan State prison at Jackson and the board of control of said Michigan state prison, for and in behalf of said State of Michigan, and on the said 22nd day of July, 1907, an agreement in writing was made and entered into by and between the board of control of the Michigan state prison at Jackson, for and in behalf of said State of Michigan, and the Hoover & Gamble Company, a corporation as aforesaid, pursuant to the said bid of the said Milton Daily, which agreement was in words and figures as follows:

"This agreement made and entered into this 22nd day of July, A. D. 1907, by and between the Board of Control of the Michigan State Prison at Jackson, Mich. party of the first part, and the Hoover and Gamble Company, a corporation organized and existing under the laws of the State of Ohio whose principal office is located at the city of Miamisburg, Ohio, party of the second part, witnesseth.

First.

Whereas the said party of the first part did on the 9th day of July, A. D. 1907 invite bids for furnishing the machinery necessary for manufacturing of binder twine, and

Whereas in pursuance of said request prices were received and considered by the said party of the first part on the 22nd day of July A. D. 1907, and it was found that the said party of the 187 second part presented the low bid, as contained in a letter from their General Sales Agent, Milton Daily of Chicago to Allen N. Armstrong under date of July 19, 1907, which letter is hereto attached and made a part of this contract; nor therefore

Second.

It is mutually agreed by and between the parties hereto that the said party of the second part shall furnish to the said party of the first part the following named machines at the times and in the manner and under the conditions hereinafter prescribed, to-wit:

- 1 No. 1 Breaker.
- 1 No. 2 Breaker.
- 1 Special Breaker and Spreader.
- 2 Spreaders (Regular).
- 4 Drawing Frames.
- 3 Finishers.
- 60 Double Flyer Spinning Jennies.
- 1 Duster and Cleaner.
- 1 Tow Picker.
- 1 Tow Card.

- 1 Tensile Strength Testing Machine.
- 1 Twine Reel.
- 4 Bell Ringers.
- 4 Balling Machines, 2 spindle.
- 3 Balling machines 3 spindle.
- 1 24 Thread Rope machine.

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Third.

It is further mutually agreed by and between the parties hereto that the aforesaid machinery shall be delivered f. o. b. cars at Miamisburg, Ohio, on or before the 22nd day of January, 1908, by the said party of the second part, unless prevented by fires or labor strikes; also that the said party of the second part shall furnish a competent man to superintend the installation and erection of the said machinery and to put the same in operation in a perfect and satisfactory manner.

Fourth.

It is further mutually agreed by and between the parties hereto that the said party of the second part guarantees the machinery above mentioned to be a complete plant for the manufacture of binder twine and capable of producing 9600 lbs. of merchantable binder twine in a working day of eight hours with a sufficient force of operatives. Also that the said party of the second part guarantees that all the machinery above mentioned shall be constructed in a thorough manner free from any defects of materials or workmanship and finished in a first class manner, also that it shall be of the latest approved patterns.

Fifth.

It is further mutually agreed by and between the parties hereto that if the machinery mentioned above shall not be furnished and delivered on or before the 22nd day of January, 1908, the said party of the second part shall for each and every day that shall elapse after the said 22nd day of January, 1908, until the delivery of said machinery pay to the said party of the first part as and for liquidated damages the sum of forty dollars over and above all costs and expenses to which the said party of the first part may be put by reason of such delay.

Sixth.

It is further mutually agreed by and between the parties hereto that in consideration of the performance by the party of the second part of the covenants and agreements herein contained the party of the first part shall pay to the party of the second part the sum of twenty nine thousand six hundred and eighty dollars (\$29,680.00) as follows: Full payment shall be made upon receipt of each bill of lading for the machinery shown on such bill until 75% of the total amount shall have been paid. The remaining 25% shall then be

retained until the machinery is all installed and tested, and operating, so as to fulfill the guarantee above given, to the satisfaction and approval of C. G. Wrentmore, Cons. Engr. of the Board of Control.

Seventh.

It is further mutually agreed that this contract shall become valid and operative only upon the execution by the said party of the second part and delivery to the said party of the first part of a surety bond in the sum of ten thousand dollars pursuant to the provision of Act 187 of the Public Acts of the State of Michigan for the year 1905, and of a like bond for a like sum for the faithful performance of this contract and to indemnify said first party against any and all suits for damages resulting from infringements of patents.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THOMAS J. NAVIN, [L. s.]

TIMOTHY C. QUINN, [L. s.]

GEO. W. MERRIMAN, [L. s.]

*Constituting the Board of Control
of the Michigan State Prison.*

THE HOOVER & GAMBLE CO.,

A. J. EMINGER, Sec'y & Treas.

In presence of
ELSIE MILLS."

That on to-wit: the said 19th day of July, 1907, the said Milton Daily, being then and there the owner of, or then and there having under his supervision and control, certain second-hand, used and worn machinery for the manufacture of twine and cordage, to-wit: one coarse breaker, one special breaker and spreader, one regular spreader, three drawing frames, coarse, medium and fine, two finishing drawing frames, four two spindle balling machines, one layer or tie cord machine, one tow picker, twenty eight double flyer spinners, two geared spinners, and one tow card, which said second-hand, used and worn machinery for the manufacture of twine and cordage, he, the said Milton Daily, was endeavoring to fraudulently substitute for and in the place of an equal amount and kind of new machinery in the carrying out of the terms and conditions of said contract between the said State of Michigan and the said Hoover & Gamble Company, entered into a corrupt agreement with the said Allen N. Armstrong as said warden of the Michigan state prison to permit the said Milton Daily to fraudulently substitute for and in place of an equal amount and kind of new machinery provided for in said contract between the said State of Michigan and the said Hoover & Gamble Company, said second-hand, used and worn machinery for the manufacture of twine and cordage then and there owned by the said Milton Daily or then and there under the supervision and control of the said Milton Daily as aforesaid, and whereby he, the said Allen N. Arm-

strong, was to refrain and abstain from communicating to the proper officers of said State or to said board of control of the Michigan state prison at Jackson the fact of such substitution and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of all moneys received under or by reason of said contract between the said State of Michigan and said Hoover & Gamble Company as the purchase price of said machinery and equipment so fraudulently delivered or to be delivered under said contract to said State of Michigan.

And the said Milton Daily and the said Hoover & Gamble Company, having thereafter furnished and delivered to the said State of Michigan in accordance with the said corrupt agreement so as aforesaid made between said Milton Daily and the said Allen N. Armstrong, such second-hand, used and worn machinery above described in place and stead of like new machinery which said contract provided should be sold and delivered by said Hoover & Gamble Company to the said State of Michigan, and said Milton Daily and the said Hoover & Gamble Company having received therefor from said State of Michigan the following purchase price provided in said contract for said new machinery, to-wit: the sum of twenty nine thousand six hundred and eighty dollars, he the said Milton Daily, for the purpose of completing, consummating and carrying out his, the said Milton Daily's corrupt agreement with the said

Allen N. Armstrong, did thereafter, on to-wit: the 13th day of May, 1908, corruptly give to the said Allen N. Armstrong at the city of Jackson, in said county of Jackson, a gift or gratuity, to-wit: the sum of fifteen hundred dollars of the lawful money of the United States with intent then and there to influence the act, vote, opinion, decision and judgment of the said Allen N. Armstrong, in the matter of the purchase of machinery for the manufacture of twine and cordage as aforesaid, the same being a matter required by law to come before said Allen N. Armstrong, as such warden in his official capacity, and to induce said Allen N. Armstrong, then and there acting in his official capacity as warden of said state prison, and in violation of his lawful duty as such warden, to continue his consent to the non-performance of said contract and the acceptance of said second-hand, used and worn machinery, so substituted as aforesaid, as a sufficient compliance with said contract, and to refrain and abstain from communicating to the proper officers of said state or to the said board of control the fact of such substitution, and to permit the retention by the said Hoover & Gamble Company and the said Milton Daily of the moneys so received by them and each of them from said State of Michigan as the purchase price of said machinery and equipment so contracted to be furnished by the said Milton Daily to the said Hoover & Gamble Company in accordance with the contract before set forth.

contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

ALBERT O. REECE,
Prosecuting Attorney.

(Endorsements:) State of Michigan. The Circuit Court for the County of Jackson. People of the State of Michigan, Complainant vs. Milton Daily, Defendant. Indictment. A True Bill. John W. Boardman, Foreman. Albert O. Reece, Prosecuting Attorney. Filed May 1, 1909. Geo. H. Townsend, Clerk. People's witnesses: Allen N. Armstrong, John C. Wenger, Aaron Wenger, John B. Brewer, Richard Meyers, R. S. Neeley, George R. Stone, Albert H. Pickett, Clarence G. Wrentmore, Henry C. Anderson, John R. Allen, Thomas J. Navin, George W. Merriman, Timothy C. Quinn, 195 Fred M. Warner, Fred H. Helmer, Frank H. Newkirk, Martha Armstrong, Richard O. Morgan, Katherine Morgan, Will G. Cooper, John E. Bryers, Bernhardt Meyers, William R. Bates.

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Warrant.

STATE OF MICHIGAN,
Jackson County, ss:

The Circuit Court for the County of Jackson of the May Term in the Year of Our Lord One Thousand Nine Hundred and Nine.

In the Name of the People of the State of Michigan to the Sheriff or any Constable of said County, Greeting:

Whereas, the Grand Jurors of the People of the State of Michigan, inquiring in and for the body of said County have upon their oaths presented unto this Court, that, heretofore, to-wit, on the first day of June A. D. 1907, at the city of Jackson in the county aforesaid, Milton Daily late of the city of Chicago, Illinois, did bribe a certain executive officer of the State of Michigan, to wit: one Allen N. Armstrong, being then and there Warden of the Michigan State Prison at Jackson, Michigan, as appears by a certain indictment filed in the office of the County Clerk of said County of Jackson, on the first day of May, 1909, against the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

Therefore, in the name of the People of the State of Michigan, you are hereby commanded forthwith to arrest the said Milton Daily and bring him before this Court to be dealt with according to 197 law.

Given under my hand and the seal of the Circuit Court for said County, at the Court House, in the city of Jackson, in said County, on the 3rd day of May A. D. 1909.

[COPY SEAL.]

JAMES A. PARKINSON,

Circuit Judge.

STATE OF MICHIGAN,
County of Jackson, ss:

The Circuit Court for the County of Jackson, at the March Term,
 A. D. 1909.

The grand jurors of the said State of Michigan, in and for said county of Jackson, and inquiring in and for the body of said county, upon their oath, do present that:

Heretofore, to-wit: on the first day of May A. D. 1908, Allen N. Armstrong, Milton Daily and Andrew J. Eminger, at the city of Jackson, in the county of Jackson and State of Michigan, did, with intent to defraud and cheat the State of Michigan and the people thereof, knowingly and designedly falsely pretend that certain machinery for the manufacture of binding twine and cordage then and there installed by the Hoover & Gamble Company, a corporation existing under the laws of the State of Ohio, in the twine and cordage plant of the State of Michigan in the state prison at said city of Jackson, in said county, was new and unused and that the same complied with the requirements of a certain contract theretofore made by said Hoover & Gamble Company with the Board of Control of the state prison at Jackson, acting in behalf of said State of Michigan therein; whereas, in truth and in fact, said machinery was not new, but was second-hand, used and worn machinery, the said State of Michigan and the people thereof and the Board
 199 of Control of said prison being deceived thereby; and by means of said false and fraudulent pretenses said Milton Daily, Allen N. Armstrong and Andrew J. Eminger did then and there, well knowing the premises and with the intent to cheat and defraud the State of Michigan and the people thereof, obtain of and from said State of Michigan a certain sum of money, to-wit, ten thousand dollars of lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that:

Heretofore and to-wit on or about the first day of July, 1907, one Allen N. Armstrong, warden of said prison, and the board of control of said Michigan state prison, were duly authorized by law to purchase, in behalf of said State of Michigan, certain machinery for the manufacture of twine and cordage to be installed in the twine and cordage plant of the said State of Michigan at the state prison in the city of Jackson in said county; and the said Allen N. Armstrong, as warden, was then and there duly authorized to pay from the funds
 200 of said State of Michigan for the machinery so purchased under such authority, and that said Board of Control, acting under such authority, having determined to purchase there-

for new machinery and having rejected a bid or offer of the said Hoover & Gamble Company, made through said Milton Daily as agent and Andrew J. Eminger, Secretary of said company, for the furnishing of second-hand, worn and used machinery therefor, and having contracted with the said Hoover & Gamble Company for the furnishing of all new machinery for the manufacture of such twine and cordage in said plant of said State of Michigan as aforesaid, the said Allen N. Armstrong, Milton Daily, late of the city of Chicago, State of Illinois, and Andrew J. Eminger, late of the city of Miamisburg, State of Ohio, well knowing the premises, with intent to defraud and cheat the State of Michigan thereby, did, on to-wit, the first day of May 1908, falsely and fraudulently pretend that the machinery so furnished and installed under said contract by said Hoover & Gamble Company was new machinery as required by said contract, whereas, in truth and in fact, a portion of said machinery, to-wit, one coarse breaker, one special breaker and spreader, one regular spreader, three drawing frames coarse, medium and fine, two finishing drawing frames, four two spindle balling machines, one layer or tie cord machine, one tow picker, twenty-eight double flyer spinners, two geared spinners and one tow card, was second-hand, used and worn machinery which had theretofore been installed and used to the knowledge of all of said defendants in a twine

201 and cordage plant at Ayton, in the province of Ontario, Dominion of Canada, with intent to defraud said state of Michigan, and the people thereof, and by means of said false and fraudulent pretenses did then and there with such intent obtain from said state of Michigan certain money, to-wit, ten thousand dollars of lawful money of the United States, said state of Michigan and the people thereof and the said Board of Control of said prison relying on said false pretenses as true and being deceived thereby, contrary to the form of the statute in such case made and provided and against the peace and dignity of the people of the State of Michigan.

Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

Heretofore, and on, to-wit, the first day of May, 1907, one Allen N. Armstrong was warden of the Michigan state prison at the city of Jackson in said county, and under the laws of said state was, in conjunction with the Board of Control of said prison, duly authorized and empowered to purchase for and in behalf of said State of Michigan certain machinery for the manufacture of twine and cordage to

202 be used in the installation, maintenance, equipment and operation of a twine and cordage plant for said state at the said state prison, and the said Allen N. Armstrong, as such warden, was then and there duly authorized to accept machinery so purchased and to pay therefor from the funds of said State of Michigan under his control under the laws of said state; and thereafter the said Board of Control and the said Allen N. Armstrong, as such warden, contracted with the Hoover & Gamble Company acting through Milton Daily, the agent, and Andrew J. Eminger, the sec-

retary of said company, for the purchase of certain machinery to be used in the installation, maintenance, equipment, and operation of said twine and cordage plant for said state, all of which, in accordance with the terms of said contract, was to be new machinery; that, before the making of said contract, said Allen N. Armstrong, conspiring with Milton Daily and Andrew J. Eminger, had corruptly agreed to substitute for the machinery so contracted to be sold to said state of Michigan for said plant as aforesaid certain old, worn and second-hand machinery of less value than the machinery so contracted to be sold, the said Board of Control of the state prison at Jackson being ignorant of such conspiracy and such intended substitution of worn, second-hand and used machinery for the new machinery required by said contract to be furnished, and being deceived and defrauded by said substitution, and the said machinery

203 so contracted for not being furnished as provided in said contract, but in place and stead of a portion thereof, said used, second-hand and worn machinery having been theretofore delivered and installed in said twine and cordage plant of said state, said Allen N. Armstrong, Milton Daily and Andrew J. Eminger, well knowing the premises and with intent to defraud and cheat the state of Michigan, did, to-wit, on the first day of May, 1908, at Jackson, in said county falsely and fraudulently pretend that the machinery so furnished and installed under said contract was the new machinery required thereby to be furnished and did render bills for such old, worn and second-hand machinery as new machinery at the prices stipulated therefor in said contract, which bills were then and there duly audited and allowed by said Allen N. Armstrong and said machinery then and there paid for as new machinery, and the said Allen N. Armstrong, Milton Daily and Andrew J. Eminger did then and there obtain and receive from said State of Michigan, by means of the false and fraudulent pretenses so as aforesaid set up, certain money, to-wit: ten thousand dollars lawful money of the United States, the said state of Michigan and the people thereof and said Board of Control then and there relying upon such false and fraudulent pretenses as true and being deceived thereby, contrary to the form of the statute in such case made and provided

204 and against the peace and dignity of the people of the state of Michigan.

ALBERT O. REECE,
Prosecuting Attorney.

(Endorsements:) State of Michigan. The Circuit Court for the County of Jackson. People of the State of Michigan, vs. Allen N. Armstrong, Milton Daily and Andrew J. Eminger. Indictment A true bill. John W. Boardman, Foreman. Albert O. Reece, Prosecuting Attorney. Witnesses: Fred. M. Warner, Timothy C. Quinn, George W. Merriman, Thos. J. Navin, Allen N. Armstrong, John B. Brewer, Bernhardt Meyers, Richard Meyers, John W. Boardman, Robert P. Bryar, John R. Stone, Aaron C. Wenger, Albert H. Pickett, Clarence G. Wrentmore, John R. Allen, Henry C. Ander-

son, — Macklin, Martha Armstrong, Richard O. Morgan,
 205 Katherine Morgan, Will G. Cooper, John E. Bryers, Fred. Z.
 Hamilton, William R. Bates, John A. Haarer, R. S. Neeley.
 Filed May 1, 1909. Geo. H. Townsend, Clerk.

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Warrant.

STATE OF MICHIGAN,
Jackson County, ss:

The Circuit Court for the County of Jackson, of the May Term, in
 the Year of Our Lord One Thousand Nine Hundred and Nine.

In the Name of the People of the State of Michigan to the Sheriff
 or Any Constable of said County, Greeting:

Whereas, The Grand Jurors of the People of the State of Michi-
 gan, inquiring in and for the body of said county, have upon their
 oaths presented unto this Court, that, heretofore, to-wit, on the first
 day of —, A. D. 1908, at the city of Jackson in the County afore-
 said, Allen N. Armstrong, Milton Daily and Andrew J. Eminger
 did, then and there, by means of false pretenses, knowingly and
 designedly, with intent to cheat and defraud the State of Michigan
 obtain of and from said State of Michigan a certain sum of money,
 to-wit: the sum of ten thousand dollars; as appears by a certain
 indictment filed in the office of the County Clerk of said County of
 Jackson, on the first day of May, 1909, against the form of the
 statute in such cases made and provided and against the peace and
 dignity of the People of the State of Michigan.

207 Therefore, in the name of the People of the State of Michi-
 gan, you are hereby commanded forthwith to arrest the said
 Allen N. Armstrong, Milton Daily and Andrew J. Eminger and
 bring them before this Court to be dealt with ac-
 (Copy seal.) cording to law.

Given under my hand and the seal of the Cir-
 cuit Court for said County, at the Court House, in the City of Jack-
 son, in said County, on the 3rd day of May, A. D. 1909.

JAMES A. PARKINSON,
Circuit Judge.

208 STATE OF MICHIGAN,
County of Jackson, ss:

Jacob F. Strobel, being first duly sworn, says that he is Under
 Sheriff of the County of Jackson in said state of Michigan, and that
 in his capacity as such officer he has in his hands for execution a
 criminal warrant for Milton Daily, on the charge of bribery, and a
 criminal warrant for Milton Daily, Andrew J. Eminger and Allen
 N. Armstrong, on the charge of obtaining ten thousand dollars in
 money from the state of Michigan by means of false pretenses.

This deponent further says, that he has been creditably informed

by the Police Department of the city of Chicago in the State of Illinois that the said Milton Daily is under arrest in the said city of Chicago, and is in the State of Illinois at this time.

Deponent further says, that he believes the said Milton Daily to be in the state of Illinois a fugitive from justice.

JACOB F. STROBEL.

Subscribed and sworn to before me this 19th day of May, 1909.

CASSIUS M. JENKS,

Police Judge.

209 STATE OF MICHIGAN,
 County of Jackson, ss:

Allen N. Armstrong being duly sworn deposes and says that on or about the first day of February, 1906, he was duly appointed Warden of the Michigan State Prison, located at the city of Jackson, in said county of Jackson, and immediately thereafter duly qualified and entered upon the discharge of the duties of said office, which he continued to hold and occupy until on or about the first day of February, 1909, and at the regular session of the Legislature of the state of Michigan for the year 1907 act No. 211 of the Public Acts of said state was passed and given immediate effect and approved by the Governor under date of June 24, 1907, which act empowered, authorized and directed the warden and board of control of the Michigan State Prison at Jackson, at a cost of not to exceed fifty thousand dollars, to use, purchase, erect, equip and maintain the buildings, machinery, boilers and equipment necessary for the manufacture of twine and cordage, together with the warehouse to be used in connection with said twine and cordage plant, and which said act appropriated the sum of one hundred and seventy-five thousand dollars for the purposes of said act, fifty thousand

dollars being appropriated for the purpose of purchasing,
210 erecting and equipping the necessary buildings, machinery, boilers and equipment to be used therein. That acting pursuant to said act the warden and board of control of said prison called for bids for the equipment of 120 spinner plant for the manufacture of twine and cordage at said prison, together with the necessary preparing machines; that bids were duly furnished by the Watson Manufacturing Company of Paterson, New Jersey, and also by the Hoover & Gamble Company of Miamisburg, Ohio, through its sales agent Milton Daily of Chicago, Illinois. The original bid for all new machinery of the said Hoover & Gamble Company being twenty-nine thousand eight hundred and five dollars, and for part new and part used machinery twenty-eight thousand and fifteen dollars. That prior to the 22nd day of July, the said Milton Daily appeared before this deponent as warden of the Michigan State Prison and the board of control of said prison at various meetings held for the purpose of considering the purchase of such machinery at the city of Jackson, in said county of Jackson, and at the city of Detroit, in said state of Michigan. That it was finally

determined by the warden and board of control of said prison that it was advisable to purchase all new machinery, and the said Milton Daily as sales agent for the said Hoover & Gamble Company was requested to make a new bid for all new machinery, which

211 he did under date of July 19, 1907, as set forth in the certified copy of indictment hereto attached. That the said bid of the said Milton Daily under date of July 19, 1907, was duly accepted by the warden and board of control of said prison, with the addition of one drawing frame at \$550.00, and one bell ringer at \$25, making total contract price the sum of \$29,680.00, and under date of July 22, 1907, the contract was duly entered into between the Board of Control of the Michigan State Prison at Jackson and Hoover & Gamble Company of Miamisburg, Ohio, for the purchase of such new machinery in the manner set forth in the certified copy of indictment hereto attached. That this deponent learned from the said Milton Daily that some three or four year- prior to the making of said contract the said Hoover & Gamble Company through its said sales agent Milton Daily had installed at Ayton, Canada, a 60 spinner plant for the manufacture of twine and cordage; that said plant has been operated for only about 45 days, which said machinery the said Milton Daily had recently acquired by purchase. That a few days prior to the acceptance of the said bid of the said Milton Daily, as above set forth, the said Milton Daily informed this deponent that he and the board of control of the Michigan State Prison at Jackson were making a mistake in purchasing all new machinery, as the said Ayton machinery owned by said

212 Milton Daily was practically as good as new, and that if this deponent would permit the said Milton Daily to substitute said Ayton machinery for an equal amount of new machinery, in the event a contract was made for the purchase of new machinery for the manufacture of twine and cordage at said prison, he the said Milton Daily would make this deponent a present of at least one thousand dollars and possibly more. That after said contract was made the said Milton Daily did substitute such second hand machinery for a like quantity of new machinery, and appeared at various times at the city of Jackson while the same was being installed and after it was installed. It was understood and agreed between this deponent and the said Milton Daily that this deponent was to refrain and abstain from communicating to the proper officer of the state of Michigan or to the board of control the fact of such substitution and to permit the said Hoover & Gamble Company and the said Milton Daily to retain the purchase price therefor. That said plant for the manufacture of twine and cordage commenced operations about the 17 day of March, 1908, and the contract price paid in full to said Hoover & Gamble Company. That thereafter and on or about the 13 day of May, 1908, the said Milton Daily as he had prior thereto agreed to do paid this deponent the sum of fifteen hundred dollars.

213 And further deponent says not.

ALLEN N. ARMSTRONG.

Subscribed and sworn to before me this 19th day of May, A. D. 1909.

CASSIUS M. JENKS,
Police Judge, Jackson, Michigan.

214 STATE OF MICHIGAN,
County of Jackson, ss:

I, George H. Townsend, Clerk of the County of Jackson and Clerk of the Circuit Court for said county which is a Court of record, do hereby certify, that Cassius M. Jenks, before whom the foregoing acknowledgments of the annexed application of Albert O. Reece, Prosecuting Attorney; the annexed affidavits of Albert O. Reece, Prosecuting Attorney, and Jacob F. Strobel, Under Sheriff, and Allen N. Armstrong purport to have been taken was at the date of said acknowledgments Judge of the Police Court of the city of Jackson, county and state aforesaid, duly elected and qualified, and by law authorized to take such acknowledgments.

I do further certify, that I am well acquainted with the handwriting of said Cassius M. Jenks, Police Judge, and verily believe his signatures thereto are genuine and that said instruments were executed, acknowledged and sworn to according to the laws of this state.

I do further certify, that I have compared the foregoing copies of indictments and warrants against Milton Daily, for the crime of bribery, and against Milton Daily and Andrew J. Eminger and Allen N. Armstrong, for the crime of obtaining ten thousand dollars in money by means of false pretenses, with the originals of said indictments filed in the office of the County Clerk of Jackson

215 County, State of Michigan, with the original warrants issued by the Honorable James A. Parkinson, Circuit Judge, of the Fourth Judicial Circuit of the State of Michigan, which said original indictments are now in my possession and custody by virtue of my office as Clerk of said Circuit Court, and the foregoing copies of said indictments and warrants are correct transcripts therefrom and of the whole of such originals.

In witness whereof, I hereunto set my hand and affix the Seal of said County and State, at Jackson, Michigan, this nineteenth day of May, in the year one thousand nine hundred and nine.

[SEAL.]

GEORGE H. TOWNSEND, *Clerk.*

216 *Verification by the Prosecuting Attorney.*

STATE OF MICHIGAN,
County of Jackson, ss:

Albert O. Reece being duly sworn says he is Prosecuting Attorney for the county of Jackson in said state; that he has read the above application by him signed, and believes all the statements therein made to be true, and that he also believes the accused party therein named to be now in the state of Illinois.

ALBERT O. REECE,
Prosecuting Attorney.

Subscribed and sworn to before me, this 19th day of May, 1909.

CASSIUS M. JENKS,

Police Judge.

Additional Verification by the Complaining Party in All Cases of Fraud, False Pretenses, Embezzlement, and Forgery.

STATE OF MICHIGAN,

County of Jackson, ss:

Albert O. Reece being duly sworn, says he is Prosecuting Attorney in the prosecution instituted against Milton Daily, and against Milton Daily, Andrew J. Eminger and Allen N. Armstrong, and for trial upon which his surrender is sought on the above application, and that he has read said application, and believes all the statements therein made to be true. He further says that he believes said accused to be now in the state of Illinois and that he desires his return only for the purpose of public justice, and not to give opportunity for the service of civil process or to compel him to settle or compromise any asserted debt or other private demand.

ALBERT O. REECE,

Prosecuting Attorney.

Subscribed and sworn to before me this 19th day of May, 1909.

CASSIUS M. JENKS,

Police Judge.

(Endorsements:) "Requisition from Michigan for Milton Daily wanted for Forgery, etc. Jacob F. Strobel, Messenger. Let warrant issue. Charles S. Deneen, Governor. 5-21-09. Filed May 21, 1909. James A. Rose, Sec'y of State."

218 Mr. THOMAS G. BARKWORTH: It is my contention on behalf of Christopher Strassheim, respondent in this case, if Your Honor please, that the jurisdiction of this court, which is a concurrent jurisdiction, should not be exercised because an appeal would lie on writ of error from the Supreme Court of the United States to the Criminal Court of Cook County in the State of Illinois; therefore, this court would not, under the decisions—the decision *ex parte Royal* 117 U. S., and several other cases—that this court ought not in advance of the hearing on writ of error to take cognizance of this cause.

Which said objection to the jurisdiction of this court was then and there overruled by The Court; to which ruling of The Court in overruling said objection, the respondent, Strassheim, then and there duly excepted.

Thereupon JOHN B. ROSE, being first duly sworn, was examined in chief by Mr. William S. Forrest, and testified, on behalf of petitioner, Milton Daily, as follows:

My name is John B. Rose. I live at 2706 Ballou Street, Chicago, Illinois, and am Assistant Messenger of the Northern Trust Company Bank. That bank is situated at the corner of Monroe and La

Salle Streets in the City of Chicago, in the State of Illinois.
219 On May 1, 1908, that bank was doing business as a bank in the City of Chicago, in the State of Illinois. I hold in my hand a deposit slip which is marked "Daily's Exhibit Deposit Slip." I got that deposit slip this morning out of the record vaults of the Northern Trust Company Bank. By "record vaults" I mean the vaults which contain the permanent records of that bank. That deposit slip is kept in the record vaults of that bank in the regular course of business, together with all the other deposit slips. We have deposit slips from the first day the bank was in existence.

Whereupon said deposit slip marked "Daily's Exhibit Deposit Slip" was then and there offered and read in evidence, and is in the words and figures following, to-wit:

marked "Daily Exhibit Express Receipt" is by me produced in response to a subpoena, and was taken by me from the record room of The Adams Express Company at Monroe and Desplaines Streets, in the said City of Chicago; that express receipt was made in the regular course of business on the 30th day of April, 1908. This express receipt is the delivery sheet of The Adams Express Company, in Chicago, Illinois, for April 30, 1908. Everything on this sheet was written in the office before it was delivered to the expressman, except what is written in the column "by whom received." This sheet and all other delivery sheets is kept by The Adams Express Company in the regular course of business. This sheet was delivered to Driver McWilliams on the 30th day of April, 1908.

Thereupon said delivery sheet was then and there offered and read in evidence, and is in the words and figures following:

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"DAILY EXHIBIT EXPRESS RECEIPT."

"Form 367. S. Writer. — Caller. Delivered by McWilliams.
Sheet No. —. Book No. 16.

"CHICAGO, ILL., Apr. 30, 1908.

"Received from Adams Express Company, in good order, the following articles set opposite our respective names.

"Register No. —.

Article & weight.	Value.	Where from.	Consignee.	Destination, street & No.	Charges.	By whom received.
	150.00 107/20	North Vernon, Ind.	Milton Daily.	115 Dearborn.	Pd.	Milton Daily.
					5.75	"

Thereupon BARTON N. McWILLIAMS, being first duly sworn, was examined in chief by Mr. William S. Forrest, and testified on behalf of the petitioner, Milton Daily, as follows:

I was a driver for the Adams Express Company April 30, 1908. I recognize the receipt in my hands marked "Daily Exhibit Express Receipt." I wrote the figures "5.75" on that sheet. It is called the "Express Delivery Sheet." I delivered the articles marked on that sheet on April 30, 1908. I delivered the package purporting to have come from North Vernon, Indiana, to Milton Daily, 115 Dearborn Street, on the 30th day of April, 1908. I do not know

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who wrote the name "Milton Daily" on that sheet. I suppose it was Milton Daily, or one of his employés.

Thereupon LEONARD A. BUSBY, being first duly sworn, was examined in chief by Mr. William S. Forrest, and testified on behalf of the petitioner, Milton Daily, as follows:

My name is Leonard A. Busby. I am an Attorney-at-Law, practicing in Chicago, Illinois, in the courts of Illinois and in the United States Court as a member of the firm of Shope, Zane, Busby & Weber. I have known Milton Daily, the petitioner, ten or twelve years, had business relations with him frequently prior to May 13, 1908, in reference to a trusteeship which Mr. Daily had concerning some land holdings in Cameron County, Texas. I saw Milton Daily in my office, Suite 1500 Title & Trust Building, 100 Washington Street, in Chicago, Illinois, on the 13th day of May, 1908, in the afternoon between two and five o'clock. He spent an hour there. I fix the date by my diary for the year 1908, (producing book). This diary was kept by me in the regular course of business. I have been keeping diaries for four or five years. This diary contains an entry made by me and in my handwriting on the 13th day of May, 1908,

as follows: "Saw Daily P. M. Says B. L. I. notes are all right
224 and that Brownell will need time but will pay. Hopes to sell the Rancho Ziejo tract." Mr. Daily as trustee was selling this land, beginning late in 1906 and 1907, selling on cash payment and deferred notes. About the middle of May one of the Brownell notes fell due. There was some question about the security, and we were anxious to know whether he would make some improvements and pay his first note. Our talk was about that, and also in reference to the sale of the last tract sold, called the Rancho Ziejo tract." I had an interest in the same land project, the largest interest of all the parties there. There were half a dozen parties.

The COURT: Is May 13, 1908, the day the money is alleged to have been paid?

Mr. FORREST: That is the day on which the money is alleged in the indictment to have been paid.

The COURT: I understand from something that was said here on a former occasion that there is no contention that Daily was in Michigan when that money was paid.

Mr. THOMAS BARKWORTH: We have never contended, if Your Honor please, that Mr. Daily was in Michigan on that day.

The COURT: As far as that is concerned the record may show that he was not in Michigan on that day?

Mr. BARKWORTH: I don't know that we want to admit that. I simply say that we have no knowledge that he was in Michigan on that day. I simply do not want to admit it as a matter
225 of record. I do not want the record to show that we admit that he was not there on that day.

The COURT: Will there be testimony on behalf of the State of Michigan that Daily was in Michigan on that day?

Mr. THOMAS BARKWORTH: I think not, Your Honor.

The COURT: There will be no testimony against this and that is enough for me. There will be no testimony by the State of Michigan against it—unless there is something further you want.

Mr. FORREST: If the gentleman simply says that he will not offer any testimony that Daily was in Michigan he will comment upon the weakness of my testimony unless I cover it fully.

WITNESS: This land which Mr. Daily held as trustee, was being sold by him from time to time. He began the sales late in 1906 and 1907, selling on a cash payment and deferred notes, and these notes were falling due from time to time. My recollection is that about the middle of May one of the Brownell notes fell due. There was some question about the security there for the reason that Brownell had purchased a part of a 600 acre tract, called Tract 128, and we expected some improvements to be made there and were anxious to know whether he would do that and pay his first note, which fell due very shortly after that. I think the record
226 shows it fell due on May 18th, and our talk was about that, and also in reference to the sale of the Rancho Ziejo tract, about 745 acres. The conversation between me and Mr. Daily on May 13th, 1908, did not exceed an hour.

LEONARD A. BUSBY, on cross-examination by Mr. THOMAS BARKWORTH, testified as follows:

I have acted as attorney for Mr. Daily in other affairs. I visited Indiana with Mr. Daily in March of this year. I do not know whether that was subsequent to the proceedings of the Grand Jury in Jackson, Michigan. I did not visit Mr. Armstrong with reference to the matters before that Grand Jury. I understood that Mr. Armstrong had been arrested. I did not go there to interview Mr. Armstrong relative to his arrest upon charges involving bribery. I did accompany Mr. Daily to see Mr. Armstrong relative to matters which I understood were under investigation at that time. I did not endeavor to have Mr. Armstrong shield Mr. Daily from attack; that was not the purpose of my visit there. I got back from Montana, I think, that morning and Mr. Daily called me up and asked me to go down to South Bend with him without making any explanation about the matter whatever. On the train going he told me about the investigation which was being made there in
227 Michigan concerning Armstrong, also what the facts were in reference to the matter, and I went down there merely as his friend. I do not know whether I wrote to The Hoover & Gamble Company or Mr. Eminger, but to one or the other. I did not visit Armstrong on that occasion with respect to the transaction between the Hoover & Gamble Company and the State of Michigan. I simply went as Mr. Daily's friend. He told me that Armstrong had sent for him to come down there, and he simply wanted me to go along. I knew nothing further about it, except I was present there and they had this talk in reference to the transaction.

Mr. THOMAS BARKWORTH: I move to strike out the evidence of Mr. Daily's statement to witness as being incompetent to prove the fact.

Which motion was denied by The Court; to which ruling of The Court counsel for respondent then and there excepted.

WITNESS: The subject of our conversation did not have reference to the transaction between the Hoover & Gamble Company and the State of Michigan and Mr. Daily's connection therewith. It had reference to the investigation being made by the prison authorities and Armstrong's conduct of prison affairs, and particularly some bribery charges against him. I do not know that the name of

Hoover and Gamble, or the name of Eminger was mentioned.

228 I did not tell Mr. Armstrong that the transaction with the

Hoover & Gamble Co. was entirely legal, and that he should not be afraid of the Grand Jury. I do not think the matter was discussed. I did not exhibit any letter from Mr. Eminger, or from myself to Mr. Eminger, dealing with the matter, and did not advise Mr. Armstrong as a lawyer that so far as the contract relations with Hoover & Gamble in the State of Michigan were concerned, there was no criminal liability involved, or that it was only a violation of the contract. I knew nothing about the contract, except in the most general way, and gave no advice at that time. I never saw Mr. Eminger in my life, and never corresponded with him. I think I wrote either him or the firm of Hoover & Gamble after that, how long I do not know. I have no copy of that letter here. I do not know whether I kept a copy or not; if so, it would be at my office. We arrived at Mr. Armstrong's house a little after Noon, and remained there probably all told two hours. The question of the relation of Mr. Daily to the prison contract was not discussed; the conversation was directed—it was Armstrong's statement as to the position he stood in with the authorities over there. Mr. Armstrong said he was in trouble there in Jackson, and they had him there

229 with the goods on him, as he put it; that if it were only himself he would not mind it, but that he had his family to look after and that for these reasons he made up his mind that if he could secure immunity from the State of Michigan by turning state's evidence that he would do so, and that if he did so, he proposed to go into all the transactions which might in any way be called into question, and for that reason he had called Mr. Daily down there to have a talk with him about the matter. I told him I did not come there as a lawyer, but as a friend of Mr. Daily, and asked him what he had to say in reference to the transaction with Mr. Daily. He said that so far as he knew, the only way in which Mr. Daily could be involved was in having his name connected with it, but if he went before the Grand Jury and turned state's evidence he would be obliged to tell everything he knew of the transactions that had theretofore been had between him and Mr. Daily. He told me that Mr. Daily had sold a plant over there, which was put into the prison in the early part of 1908, March, if I remember rightly, and afterwards was approved and accepted, that in the May following he saw Mr. Daily in Chicago and said: "You have had your plant put in over there, you have got it in, and if it is accepted you are going to get your money, and you have sold it at a good price. I am a poor man and I want you to make me some allowance out of

this." And he said that he and Daily had some talk in reference to that, and as a result of that talk, Mr. Daily told him he would consider it, and that afterwards he (Daily) sent him (Armstrong) \$1000. or \$1500., I think it was the latter. He said he had not talked with Daily in reference to that phase of the transaction prior to that time, that he had never mentioned it to him while they were over there. I expressed sympathy for him, and said, if these are the facts I have no objection to your telling all about this. He referred to what he claimed was a persecution by the State of Michigan, and that under all the circumstances if he could get an agreement he was going to disclose everything he knew, and be on the square about it. I have a reference to this trip in my diary as follows: "Sunday, March 7. At the office 9 A. M., 10 A. M. left for South Bend with Daily." I have told all the conversation in substance with Armstrong from my recollection. Mr. Daily, as I recollect, said very little, except to say that that was a fact, and that he had no objection, altho he regretted to have his name brought up in connection with that sort of thing—that it was unfortunate there was nothing to do for Armstrong—to do the best he could to take care of himself. I do not know how long after that before I corresponded with the Hoover & Gamble Company. After the extradition proceedings I was informed that Mr. Eminger had been indicted in Michigan, and I think I then wrote in reference to who would represent him in Ohio as his counsel. I did that at Mr. Daly's request, and as his friend.

MR. THOMAS BARKWORTH:

Q. Aside from your diary do you have any remembrance of this day so that you could fix it other than from your diary?

A. Which day?

MR. THOMAS BARKWORTH: Either day.

A. I know that the Brownell note fell due on the 18th, and I know that my conversation with Mr. Daily was a few days prior to that, but I fix the exact date by my diary and I would not fix the exact date except by reference to that, but I know the diary is correct.

MR. THOMAS BARKWORTH:

Q. Do you know about the trains between Jackson and Chicago on the Michigan Central Railroad?

MR. WILLIAM S. FORREST: I object. The trains have nothing to do with cross examination.

Which objection was overruled by The Court, to which ruling of The Court the counsel for petitioner then and there excepted.

WITNESS: I do not know anything about the running of the trains between Chicago and Jackson on the Michigan Central Railroad at that time in May, 1908. I don't even know the roads. I did not tell Mr. Armstrong that the Grand Jury would assume to know a great deal that they did not know or anything of that kind.

232 Thereupon W. W. YEATES, being first duly sworn, was examined in chief by Mr. William S. Forrest, and testified on behalf of the petitioner, Milton Daily, as follows:

I live at 4232 Prairie Avenue, Chicago, Illinois. I have known Mr. Daily ten or twelve years. I am engaged in the real estate business at Room 604—115 Dearborn Street Chicago, Illinois, for the past twelve years. Mr. Daily's place of business is the room adjoining, Daily's room is Room 603. I went to my office on the 13th day of May, 1908, about eight o'clock in the morning. As usual I went in Mr. Daily's office and spoke to him. There is an elevator in the building 115 Dearborn Street. Daily's office is just to the left of the elevator in coming out. As I got off the elevator on the morning of May 13, 1908, I went in to Mr. Daily's office. I have a practice with reference to going into Mr. Daily's office when I get off the elevator in the morning. Mr. Daily stays in his office later than I do in mine. He has a key to our office. His office is just adjoining our office and he can hear the telephone bell or anybody coming in, and he can see if it is any person for me, or he can answer the telephone if it is a telephone call, he or his help, and I usually come there in the morning and ask if anybody called me up the night before, and say good morning. Mr. Daily has

233 had a key to our office ever since I had an office. As usual about eight o'clock of the morning of May 13th, 1908, I went into Mr. Daily's office and spoke to him. I was taken sick going down to the office on that day, but remained in the office until one o'clock and then went home. I felt real bad and got quite sick before Noon, but I had some important business, some important mail coming, and I stayed in the office until one o'clock, or pretty near one o'clock, or about that time, and Mr. Daily insisted on my going home, and I told him I would as soon as I got that mail. I went home that day because of my sickness. It was the only day in the year 1908 I went home because of my illness. I know that the incident I have referred to of being ill on that day and of meeting Mr. Daily on that day occurred on May 13th, 1908, because I kept a diary of 1908. I have the diary with me now. (Here the witness produces the diary.) It is a small diary; I do not know whether you can read it or not. I kept this diary all last year and all the year before and part of this year. I skipped part of this year on my new book. I made the following entry in my diary on May 13th, 1908:

"Cross is away from home, rained nearly all day. Went home sick at 1 P. M."

Mr. FORREST: I would like to have opposing counsel see this diary (handing diary to Mr. Thomas Barkworth.)

234 Mr. THOMAS BARKWORTH: I don't care anything about it, except to see that it is apparently regular; that is all.

Mr. THOMAS BARKWORTH: It seems to be a regular-kept entry and in a correctly kept diary, so far as I can see.

Whereupon the diary was handed to and examined by the Court.

WITNESS: I have kept a diary three or four years. The ex-

planation which I wish to make is this: I was in the real estate business and had a trade on with parties, one was named Cross and one was named Herrick, and where it says "Cross is away from home" today, why I couldn't do any business with him, he was away from home. It rained nearly all day. I saw Herrick and he will make the trade. The hour at which I arrive at my office in the morning is usually eight o'clock. The latest hour on which I saw Mr. Daily on May 13th, 1908, was about one o'clock. I saw Mr. Daily on May 1, 1908, at my office, 115 Dearborn Street in Chicago, Illinois. Something occurred in my office on the morning of May 1, 1908. We received a lot of samples from the San Jose Lumber Company in Mexico. Mr. Daily and others were interested in that company. I was in my office on the morning of May 1st, 1908, also Mr. Daily, the petitioner, Mr. Stanhope and Mr.

Hoyer. I think nobody else was in my office in the forenoon of that day. In the afternoon Mr. Eng came into my office. There was a conversation in my office on the morning of May 1st, 1908, in regard to timber.

Mr. FORREST: If The Court please, the significance of this express company's sheet is that that box was received the day before, April 30th.

The COURT: Yes.

WITNESS: On May 1st, 1908, Mr. Daily brought a box into our office about nine or ten o'clock and opened it. It was a small box, about ten or twelve inches square, and there were twelve samples of wood in it of different kinds and qualities. Mr. Stanhope who had the engineer's report of the different kinds of wood, he wrote out the names of the different kinds of wood in ink on those samples. We talked about it and they wanted me to join them in the deal. The name of the company was the San Jose Lumber Company. I had not joined the company at that time. I was in my office on the morning of May 1st, 1908, from about eight o'clock until twelve o'clock. When I first saw that box of samples it was on the floor in our office and closed. I don't know whether it was nine or half past nine or ten o'clock in the forenoon of May 1st, 1908, when I first saw that box. Mr. Eng came into my office on May 1st, 1908, after luncheon. I went to luncheon that day.

236 On the forenoon of May 1st, 1908, Mr. Daily, the petitioner, was in our office I should say from half past nine or ten o'clock until twelve. I also saw Milton Daily in the afternoon of May 1st, 1908. I fix the date, May 1st, 1908, in this way: Mr. Daily told me he was expecting those samples, and they were anxious that I should join that company. I am quite an expert in the timber business and they wanted me in, and Daily said he had sent to Mr. Tripp for samples. Mr. Tripp was the President of the company, he lived in the northern part of Indiana. Mr. Tripp sent Mr. Daily samples, and Daily said they would be in, that he expected them any day, and so he brought them in, and said that he had received them the evening before. Daily told me, I don't know whether it was the day before, that they were coming or that he

had them. I saw them the next morning myself after he opened them up. On May 1st, 1908, in my office Daily said that he had received those samples of wood the day before. I did not buy any stock in that San Jose Lumber Company until ten months or a year later; then I bought some stock in it. I am a stockholder in the San Jose Lumber Company now.

237 Mr. W. W. YEATES on Cross Examination by Mr. Thomas Barkworth testified as follows:

Mr. Daily and I are quite intimate. We have had a good deal of business together. I do not know of his going to Michigan in April, 1908. He did not talk it over with me at all. I did not know about his deals in Michigan or in Ohio, or with The Hoover & Gamble Company. My attention was first called to the importance of these dates when Mr. Daily told me that he was indicted. I can't tell when that was. He wanted to know if I knew where he was then. He said they claimed he was in Michigan on that day, and he was not there. I looked back at my diary and then found out about that and remembered I was sick on the 13th day of May. I had never been sick before so that I had to go home; that is on the diary. It shows I was sick a day or two after that. It has this entry on the 14th: "Stayed at home today, went out and saw H. and wife and signed contract." That was the only time I was sick. Mr. Daily was in the sisal and hemp business. I did not know anything about his dealing in binder twine machinery. I learned Mr. Daily was indicted from the newspapers. He spoke to me about it the same day. I never knew of Mr. Busby going to South Bend with Mr. Daily.

238 Mr. W. W. YEATES on Re-Direct Examination by Mr. William S. Forrest testified as follows:

When Mr. Daily spoke to me about the date he said that he was indicted and the indictment stated that he was there on the 13th and the first of May, 1908, and he asked me if I knew whether he was or not, and I said, "I do not know whether you were or not, but," I says, "I can find out something, think of something that brings my attention to that date, and I will look over my last year's diary." I looked over that and I remembered about being sick and he insisted on my going home. He was quite uneasy about me as I was quite sick at the office. I referred to the diary and saw that the date was of the 13th. He asked me about the first. I said, "I don't know anything about that." He told me we had received those samples sometime about the first of May. Then to prove that we went and saw the Express Company's receipt, that it was received on the last day of April, and the next morning we opened it. That is how I refreshed my mind on those things.

Thereupon G. H. COHLGRAFF, being duly sworn, was examined in chief by Mr. William S. Forrest, and testified on behalf of the petitioner, Milton Daily, as follows:

239 I am in the real estate business at 1310 Sheridan Road, in Chicago, Illinois. The firm name is Edward C. Hoyer &

Company. Mr. Daily's residence is a block and a half north and a block west on Kenmore Avenue. Our office is two and one half blocks south of Mr. Stanhope's office. The first avenue north of my place of business is Graceland Avenue, sometimes called Irving Park Boulevard. The Elevated Railway Station is right across the street from our office. I have known Milton Daily, the petitioner, about five years. We handle some property for him. I was in our office May 12th and May 13th, 1908. Mr. Hoyer or I generally stay in the evening up to half past seven, eight or nine o'clock in our office. We keep our real estate office open at night because people come at night and pay rent. We have the renting as well as buying and selling of real estate. My birthday is May 13th. I was at our office on the night of May 12th, A. D. 1908, 1310 Sheridan Road, Chicago, Illinois. I saw Mr. Daily that night about seven o'clock. He came in the office and wanted to see Mr. Hoyer, but Mr. Hoyer was not in. I closed up the office and he walked out to the door with me, and Mr. Daily said he wanted to see Mr. Hoyer about some deal. Mr. Hoyer was doing business with him. He did not go into details, and he just talked for awhile and it was just about the
240 time for me to close up. I had called up the house that I was coming home, and I told him that I was going home, and he said all right, and he walked out to the door with me, and while I was turning out the lights we were talking about something, about different propositions about the tenants in the building, and I closed the office and walked north, and I was going over to the tailor's to pay a bill for pressing a suit of clothes, and Daily and I walked north from my office as far as Graceland Avenue, and I then went west to the tailor and Mr. Daily went on north. Daily lives west you know, but he went north. Well, I started to go west from Sheridan Road on Graceland Avenue and thinking Mr. Daily was going to follow me, but he went straight north, and I asked him where he was going, and he said he was going over to Stanhope's house. I thought Daily would go west instead of north because Daily lives over west, and I went west because I went over to the tailor. The Sheridan Tailoring Company at the shop of The Sheridan Tailoring Company; I paid the bill for pressing little things, repairing and stuff like that.

Whereupon a paper marked "Daily Exhibit Cohlgraff" was placed in the hands of the Witness Cohlgraff:

WITNESS: This paper marked "Daily's Exhibit Cohlgraff" is the bill I paid that night, that is the receipt for it. He (the
241 tailor) don't give any bills. I got that receipt from Telfer, the Manager of The Sheridan Tailoring Company on the night of May 12th, 1908.

Whereupon said receipt marked "Daily's Exhibit Cohlgraff" was offered and read in evidence, and is in the words and figures as follows:

"DAILY'S EXHIBIT COHLGRAFF."

"\$4.50.

MAY 12TH, 1908.

Received from Geo. H. Cohlgraff Four 50/100 dollars for pressing and repairing clothing.

SHERIDAN TAILORING COMPANY,
By TELFSER."

WITNESS: In going home from our office I usually go right across the street to the Elevated Road. I live about two and a half miles south of the office. The entrance to the Elevated Road is immediately across the street from our office, a little to the right, and the only purpose that I had in going up to Graceland Avenue on the night of May 12th, 1908, was to pay this bill. The next morning, May 13th, 1908, Mr. Hoyer my partner came into our office, and I told him that Mr. Daily wanted to see him about a deal, and Hoyer said "I suppose it is on that Byron Street," and I told him to call up Daily, and after awhile he did call him up. It was my birthday, the 13th, and we walked across the street into the cigar store, and he bought me a box of cigars for a birthday present. Hoyer is my brother-in-law as well as my partner. After Hoyer bought me the box of cigars we walked back to the office and attended to our business.

Thereupon N. TELFSER, being first duly sworn, was examined in chief by Mr. William S. Forrest, and testified on behalf of the petitioner, Milton Daily, as follows:

I am a tailor, have been in business two years and nine months with The Sheridan Tailoring Company, at 1349 Graceland Avenue, Chicago, Illinois. It is my business, I repair and press Mr. Geo. H. Cohlgraff's clothes. I have seen this receipt, marked "Daily's Exhibit Cohlgraff" before; it is in my handwriting. I know Mr. Geo. H. Cohlgraff. I have done business for him ever since I have been on Graceland Avenue. I also make clothing for him. I would not have receipted that bill if I had not received the money. I must have received the money on that day, May 12th, 1908, otherwise I would not have dated it May 12th, 1908. At that time I did not keep any record at all, nor did I keep any books at that time. I always put the right date on a receipt.

243 Thereupon EDWARD C. HOYER, being first duly sworn, was examined in chief by Mr. William S. Forrest, and testified on behalf of the petitioner, Milton Daily, as follows:

I am in the real estate business, 1310 Sheridan Road, Chicago, Illinois; the firm name is Edward C. Hoyer & Co. Mr. Geo. H. Cohlgraff is my partner. I have known Mr. Daily about ten years. Have sold real estate to him, and have handled his property. I had business with Mr. Daily, the petitioner, in my office May 13th, 1908. I talked with him over the telephone because my partner told me to call him up. At that time Mr. Daily told me over the telephone that

he wanted to see me about a deal he had on with reference to the Byron Street property, and I told him I would be at the office that night, and if he had time to drop in, and he said he would. I called Daily up on the telephone on the morning of May 13th, 1908 because my partner, Cohlgraff, told me that Daily wanted to see me about business, when I came into the office in the morning, then I said to Cohlgraff "This is your birthday and we will go over and buy a box of cigars" and I took him across the street and bought him a box of cigars. Daily came to my office about seven o'clock that night, and we talked together until about eight o'clock. Daily

244 and I had a deal on; Daily wanted to trade a six flat building for some vacant property, the six flat building was at 1334 and 1336 Byron Street. I told Daily that it was not a good proposition, that it was vacant property, and he was trading a six flat building for vacant property, and I told him that he could not handle vacant property very well. I said to him that he was not in the building business, that the chances were he would get stuck when he went to trade a flat building for vacant property, so he decided not to make the deal. At about eight o'clock I closed up my office and walked north to Graceland Avenue, or Irving Park Boulevard, then Daily went west and I went east to Evanston Avenue, down home. I live about a mile south from the office.

I was in Mr. Daily's office on May 1st 1908 between half past nine and ten o'clock. I went to see him about a tenant, named Dolff, who had moved out from third flat, 1334 Byron Street, April 30th owing us rent. I talked to Daily about it and he told me to go ahead and bring suit. Then I put this note on the lease, in lead pencil, in my handwriting: "May 1, '08, saw Daily. Commence suit."

Whereupon said lease was offered and read in evidence and is in the words and figures following, to-wit:

By stipulation between the parties, it is hereby agreed that
245 said lease was a lease for the third floor of building known as 1336 Byron Street, in the City of Chicago, in the State of Illinois, and that the term of said lease was from the 1st day of May, 1907 until the 30th day of September, 1908, and that said lease was signed "Milton Daily, by Edward C. Hoyer & Co., Agents, and B. S. Dolff," and that on the back of said lease there was written in lead pencil the following words, to-wit: "May 1, '08, saw Daily. Commence suit."

WITNESS: I made that note on that lease May 1st, 1908. Then Daily told me that the samples of wood from the plantation in Mexico had arrived and he wanted me to see them. At that time I had stock in the San Jose Lumber Company; I had become a stockholder in that company about six months before that. We then walked into Mr. Yeates' office and looked over samples of wood. Mr. Stanhope had them all opened up. We looked at them and talked about the deal until about noon. We came back about one o'clock and Mr. Engs was there. I remained there until two o'clock and left. I fix the date I was in Mr. Yeates' office by this memorandum on

my lease, meaning "May 1, '08, saw Daily. Commence suit." I fix the date of May 13th by the fact that it is Mr. Cohlgraff's birthday, he is my brother-in-law. I bought him a box of cigars, and right after that I called up Mr. Daily, and he came up that night, also Mr. Cohlgraff showed me that tailor's receipt and that refreshed my memory.

Thereupon PHILIP W. STANHOPE, being first duly sworn, was examined in chief by Mr. William S. Forrest, and testified on behalf of the petitioner, Milton Daily, as follows:

I live at 945 Alexander Place, in Chicago, Illinois. My house is one block east and two blocks south from Daily's house. I have known Mr. Daily, the petitioner, twenty-five years, and have been associated with him in the lumber business. We are interested in the San Jose Lumber Company. I became a stockholder in the San Jose Lumber Company in January, 1908.

I was at my office, 115 Dearborn Street, Room 604, May 1st, 1908. Mr. Yeates and I have the office together. Mr. Yeates was there, Mr. Hoyer, Mr. Daily and myself in the morning. Mr. Eng came in the afternoon. Mr. Daily brought in my office the box of samples of timber. He had told me the day before that the box had come but he was too busy to attend to it until the next day. We opened up the box and I marked the quality and quantity on the samples. The engineer had marked them in Spanish, which I translated into English. Mr. Daily and I were there from nine or half past nine until twelve o'clock. We all met together in the afternoon. I remained in the office until about half past four. I remember the date was May 1st, 1908, by looking up the express receipt, showing the package was received April 30th. I am positive it was the first day of the month the box was opened because it followed the day of the receipt of the box.

I was in my office May 13th, 1908. Milton Daily came there about eight thirty in the morning. I found Mr. Yeates quite sick in the morning. I told him he had better go home, and he said he did not want to go home until about noon. I spoke to Mr. Daily about Mr. Yeates being pretty sick and he said he had already been in to see him and had advised him to go home. I remember the date by Mr. Yeates' diary, and the fact that Mr. Yeates had never been sick to my knowledge before. Daily was there May 13, 1908, I think, all day.

Mr. Daily spent the evening of May 12th at my house. We played billiards until about ten o'clock. I remember the date by this document. I am in the habit of stamping receipt dates on documents I receive.

Thereupon a document marked "Daily Exhibit Stanhope 1" was placed in the hands of the witness.

WITNESS: This document marked "Daily Exhibit Stanhope 1" is a copy of the By-laws of the Mexican Nevada Exploration Company. The name of the Mexican Nevada Exploration Company was afterwards changed to San Jose Lumber Company.

Thereupon another document marked "Daily Exhibit Stanhope 2" was placed in the hands of the witness:

WITNESS: This paper marked "Daily Exhibit Stanhope 2" is a letter which was stamped by me the day I received it "May 18, 1908." It is a letter which I received May 18, 1908, from T. E. Martin, Detroit, Michigan. The copy of the By-Laws marked "Daily Exhibit Stanhope 1" I put in my pocket and talked with Mr. Daily about it that night, May 12, 1908. I made a copy of those By-Laws for Mr. T. E. Martin and mailed it to him on May 14, 1908. It took me some little time to make that copy because I am not an expert typewriter. Now then, that letter marked "Daily Exhibit Stanhope 2" is a letter from Mr. Martin and in the handwriting of Mr. Martin in which he acknowledges the receipt of my letter enclosing the By-Laws under date of May 17, and acknowledging my letter of May 14th and thanking me for the same.

Said letter marked "Daily Exhibit Stanhope 2" contains among other things the following:

"DETROIT, MICH., May 17, 1908.

P. W. Stanhope, 115 Dearborn Street, Chicago, Illinois.

My DEAR STANHOPE: I wish to acknowledge your kind
249 favor of the 14th instant and to thank you most heartily for the trouble you took to get out for me a copy of the By-Laws of M-N-E. Co., but the only real remuneration I can see you getting is the needed practice and experience on the typewriter."

WITNESS: I remember receiving the document marked "Daily Exhibit Stanhope 1" on May 12, 1908. At the time I received it I stamped it "May 12, 1908."

Thereupon PHILIP W. STANHOPE, on cross-examination by Mr. Thomas Barkworth, testified as follows:

My recollection with regard to May 1st depends upon receipt of the samples of timber April 30, 1908. I spent most of that day, viz., May 1st, 1908, with Mr. Daily talking about the samples. He was there in the morning until luncheon, and there again after luncheon until about half past four o'clock.

My recollection of May 13th depends upon Mr. Yeates' diary, and the fact that Mr. Yeates was sick. I have no other distinct recollection that would fix the date in my mind. I have a recollection distinctly of the circumstances. Mr. Daily was at my house on the evening of the 12th until about ten o'clock. My recollection of meeting Mr. Daily at my house on the evening of

May 12th, 1908, depends upon the date stamped upon the
250 document marked "Daily Exhibit Stanhope 1," and it is refreshed by Mr. Kohlgraff's statement. I think I remember quite distinctly talking to Mr. Daily on the night of May 12th,

1908, about the By-Laws of our Company. My custom is on receiving a document to stamp upon it the date of its receipt.

Whereupon said documents marked respectively "Daily Exhibit Stanhope 1" and "Daily Exhibit Stanhope 2" were offered and received in evidence on behalf of the petitioner, Milton Daily, and so much of said "Daily Exhibit Stanhope 2" as has already been hereinbefore set forth was then and there read in evidence. Said document marked "Daily Exhibit Stanhope 1" is a copy of the by-laws of the San Jose Lumber Company.

Upon the face of said document marked "Daily Exhibit Stanhope 1" when the same was received in evidence there appeared, stamped in red ink, the following word and figures, that is to say, "May 12, 1908," and upon the face of said document marked "Daily Exhibit Stanhope 2" when the same was received in evidence there appeared, stamped in red ink, the following word and figures, that is to say: "May 18, 1908."

WITNESS: I had no settled business at that time, except to look after personal matters. I have not any now. I have had a desk for three or four years in Mr. Yeates' office. Have had intimate acquaintance with Mr. Daily for twenty or twenty five years and business relations with him the past year or two. Have
251 been directly associated with the business of Mr. Daily since 1892. I have been in several enterprises with him. I have no knowledge of any visits of Mr. Daily to Michigan. I have heard Mr. Daily sold machinery to the Stillwater people.

Thereupon PHILIP W. STANHOPE on redirect examination by Mr. William S. Forrest, testified as follows:

I hold in my hands the express receipt marked "Daily Exhibit Express Receipt." The name "Milton Daily," on that receipt, in the column headed "By Whom Received," is in the handwriting of Milton Daily, the petitioner. I am quite familiar with Milton Daily's handwriting. I have had a great number of letters from him and have seen him write his name a number of times.

Thereupon SAMUEL M. ENGS, being first duly sworn, was examined in chief by Mr. William S. Forrest, and testified on behalf of the petitioner, Milton Daily, as follows:

I live on Wilson Avenue, Chicago, Illinois. Am engaged in the business of selling automobiles, and have known Mr. Milton Daily about six years. Am acquainted with Mr. Philip Stanhope and had business relations with him prior to May 1st, 1908. I was in Mr. Stanhope's office at 115 Dearborn Street, in Chicago, Illinois,
252 between the hours of 12:30 and three o'clock on May 1, 1908. Mr. Stanhope's office adjoins the office of Milton Daily, the petitioner. Mr. Yeates was there in Mr. Stanhope's office when I arrived. After lunch Mr. Daily, Mr. Stanhope, Mr. Yeates and Mr. Hoyer were in the office of Mr. Stanhope. Milton Daily, the petitioner, was there in Mr. Stanhope's office, in my presence, on May 1, 1908, in the afternoon from about half past twelve o'clock
14—638

until about half past two o'clock. I fix the date from the fact that it was necessary for me to report to Mr. Stanhope on that day for the preceding month's business; also from the fact that I did not dictate my letters on that day as usual because I did not reach my office until about three o'clock in the afternoon, when it was too late to do the dictation and get the letters off that afternoon. It was necessary for me to report to Mr. Stanhope on that day because Mr. Stanhope had advanced us money and prior to that month our business had not succeeded very well. It had showed a loss every month prior to that since we had started, and it was the end of our fiscal year, that very day. It had been my custom to make a report to Mr. Stanhope every month, and especially at this time I remember the date distinctly because it was the first month that our business had showed a profit since we had started and I was very anxious to make a report as early as possible. I usually dictate to the stenographer about one o'clock and on this day I did not dictate any letters because I did not reach my office until
253 about three o'clock, too late to attend to the dictation and have the stenographer get the letters off promptly that evening. I know I did not dictate the letters on that day, May 1st, 1908, because my form of dictation is entirely different from the dictation of my partner, Mr. Adams, and I know from looking up the carbon copies of our letters of that day that I positively did not dictate to the stenographer any letters on that day. The conversation among all the parties in Mr. Yates' office on the afternoon of May 1st, 1908, was about some samples of wood that they had there.

Thereupon SAMUEL M. ENGS, on cross-examination by Mr. Thomas Barkworth, testified as follows:

I arrived at Mr. Stanhope's office about 12.30 on the 1st day of May, 1908, found Mr. Yeates who said Mr. Stanhope had gone to lunch. I waited awhile in Mr. Daily's office and talked with him. There was no one with him except his stenographer. We talked about the samples of wood from Mexico. The samples were smoothed down, marked with the names of different kinds of wood, and were in size about 8 or 10 inches long and six inches wide. I interviewed Mr. Stanhope between two and three o'clock, when he returned from luncheon. He came back with Mr. Hoyer. Mr. Daily and Mr. Yeates were in the room talking. I have known Mr. Daily about six years, have had no business association with him.

It was stipulated by counsel that the first day of May, 1908, was Friday, the thirteenth day of May, 1908, was Wednesday.

254 Thereupon EMMA G. HOPP, being first duly sworn, was examined in chief by Mr. William S. Forrest, and testified on behalf of the petitioner, Milton Daily, as follows:

My name is Emma G. Hopp. I live at 1050 Center Street, Chicago, Illinois. I have known the petitioner, Milton Daily, for ten or twelve years, and have been in his employ since January, 1901, as stenographer and typewriter. While I have been in the employ-

ment of the petitioner, he has been in the habit of dictating to me almost daily letters, which dictation I take down in shorthand notes and then transcribe my shorthand notes on the typewriter. After the letters dictated to me by Mr. Daily have been thus transcribed by me the letters are signed by Mr. Daily and then copied in a letter copy book. The letter copy book marked "Daily Exhibit Letter Copy Book" which I now hold in my hands is Mr. Daily's letter copy book. The letters copied into that copy book are letters written from and between December 9, 1907 to and until August 31, 1908. That letter copy book has been kept by me in Mr. Daily's office in the regular course of Mr. Daily's business. All the dates on all the letters in that copy book which appear at the heads of the
 255 letters in typewriting have been put there by me. I have put those dates there correctly. I put the dates on those letters, on the dates on which they were respectively written and which they bear. Mr. Daily signs the letters when Mr. Daily is in the City of Chicago; when Mr. Daily is not in the City of Chicago I sign the letters. The letter marked "Daily Exhibit Letter 1" on page 351 of "Daily Exhibit Letter Copy Book" is a copy of a letter which was dictated to me by Mr. Daily at his office, 115 Dearborn Street in Chicago, State of Illinois on April 6, 1908; the signature "Milton Daily" to that letter is in the handwriting of Milton Daily, the petitioner. I know Milton Daily's handwriting and signature. The letter of which that is a copy was signed by Mr. Daily in my presence, and the signature of that letter in the copy book is a letter press copy of Mr. Daily's signature.

Whereupon said letter marked "Daily Exhibit Letter 1" was then and there offered and read in evidence, and is in the words and figures following:

DAILY EXHIBIT LETTER 1, PAGE 351.

"CHICAGO, April 6th, 1908.

Mr. M. J. Smith, New York City.

DEAR MIKE: Your two favors of the 4th received. Seems to me the market is firmer in New York. I do not think there is the least danger of my selling out here at the equivalent of 5 1/16 f. o. b. Progreso. There is no inquiry and Greendyke does not want to buy just now, thinking the market will probably be lower.

I received a mean letter from Montes this morning. It was written on the 28th of March, in which he told me plainly that
 256 he did not believe that Peabody had offered to sell Minnesota State Prison at the price at which I sold. I have written him that if I should tell Wolfer this, he would never get any more information from that Gentleman. Wolfer told me when he gave me the order that he did not think it was right for him to ask Peabody for his lowest price and then give me the business at the same price.

He not only offered Wolfer at that figure on the 24th but made Peoria the same price, at which Heidrich bought 1000 bales at 5 1/4 cts.

Montes says that I seem to have only my own interests in mind and do not care anything about his, which is absolutely false.

I have not talked with Greendyke today, but Dayton told me last week that he is to go East and try to fix up the troubles that Jim has gotten into with the brokers, and particularly Bayley. Greendyke has never said a word to me about Dayton's going.

Just had talk with Greendyke who says he has no line on the 250 bales, and that if he can find them in the vicinity of Detroit, he will have them sent back to Peterboro, as it looks now as though he might get the Texas City shipment in by Thursday, and he does not believe that your shipment will arrive any sooner. It has been certainly exasperating and would try a man with more even temper than Jim possesses.

Sincerely yours,

MILTON DAILY."

WITNESS: All the letters of which copies are found in this letter copy book, meaning book marked Daily Exhibit Letter Copy Book, and which were signed by Mr. Daily, were dictated to me by Mr. Daily at Mr. Daily's office, 115 Dearborn Street, in the City of Chicago, Illinois, on the dates which said letters respectively bear in said Letter Copy Book.

257 I can tell from an examination of this Letter Copy Book whether Milton Daily left the City of Chicago on April 6, 1908. Milton Daily left the City of Chicago on April 6, 1908. He was not in the City of Chicago on April 7, 1908. I know that fact because the letter marked "Daily Exhibit Letter 3" dated April 7, 1908, on Page 353 of this Letter Copy Book was written by me. The letter I refer to is addressed to Mr. M. J. Smith; the signature to that letter is E. G. Hopp, my signature. The contents and the signature of that letter show me that Mr. Daily was not in the City of Chicago on April 7, 1908.

Whereupon letter marked "Daily Exhibit Letter 3" was offered and read in evidence, and is in the words and figures following:

DAILY EXHIBIT LETTER 3, PAGE 353.

"CHICAGO, April 7th, 1908.

Mr. M. J. Smith, New York City, N. Y.

DEAR MR. SMITH: This is to inform you that the boss is away and will be for another day. He has gone to Jackson, Mich., and I am keeping the ranch during his absence. Sold Rugg & Co. 150 bales at equivalent $5 \frac{1}{16}$ f. o. b. Progreso for immediate shipment. I had hoped to hear from Peoria and Rauschenberger, but they have not shown up so far. Outside of this little sale there is nothing doing here and our privilege to sell at that price closes tonight. I hope you will have a good time on the check which I sent you, and please be liberal and take your friends out,—say Mr. Butler, but be sure you do not treat him to anything but a soft drink.

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and

DAILY EXHIBIT LETTER 2, PAGE 352.

"APRIL 6TH, 1908.

Mes

259

this

for

Texas City. Stillwater, Lansing and North Dakota could take theirs via Texas City as well as Mobile, if not better.

Yours sincerely,

MILTON DAILY."

WITNESS: All the letters in this book marked "Daily Exhibit Letter Copy Book" were written on the dates which they respectively bear in the Letter Copy Book, and they were signed on the dates which they respectively bear in the Letter Copy Book immediately after I wrote them.

Milton Daily was in the City of Chicago, Illinois, on April 29, 1908, on April 30, 1908, on May 1, 1908, and May 2, 1908.
260 I know that fact from the letters in this Letter Copy Book on Pages 419 to 431 inclusive, which letters are marked respectively "Daily Exhibit Letter 4," "Daily Exhibit Letter 5," "Daily Exhibit Letter 6," "Daily Exhibit Letter 7," "Daily Exhibit Letter 8," "Daily Exhibit Letter 9," "Daily Exhibit Letter 10," "Daily Exhibit Letter 11," "Daily Exhibit Letter 12," "Daily Exhibit Letter 13," "Daily Exhibit Letter 14," "Daily Exhibit Letter 15" and "Daily Exhibit Telegram 16." The letters in this Letter Copy Book marked respectively "Daily Exhibit Letter 4," "Daily Exhibit Letter 5" and "Daily Exhibit Letter 6" were dictated to me by the petitioner, Milton Daily, and signed by the petitioner, Milton Daily, in my presence at his office in the City of Chicago, Illinois, on April 29, 1908. The signature to each one of the letters last mentioned by me is the signature of Milton Daily, and is in the handwriting of Milton Daily.

The letters in this Letter Copy Book marked respectively "Daily Exhibit Letter 7," "Daily Exhibit Letter 8" and "Daily Exhibit Letter 9" were dictated to me by the petitioner, Milton Daily, and signed by the petitioner, Milton Daily, in my presence at his office in the City of Chicago, Illinois, April 30, 1908. The signature to each one of the letters last mentioned by me is the signature of Milton Daily, and is in the handwriting of Milton Daily.
261

The letters in this Letter Copy Book marked respectively "Daily Exhibit Letter 10," "Daily Exhibit Letter 11," "Daily Exhibit Letter 12" and "Daily Exhibit Letter 13" were dictated to me by the petitioner, Milton Daily, and signed by the petitioner, Milton Daily, in my presence at his office in the City of Chicago, Illinois, on May 1, 1908. The signature to each one of the letters last mentioned by me is the signature of Milton Daily, and is in the handwriting of Milton Daily.

The letters in this Letter Copy Book marked respectively "Daily Exhibit Letter 14," "Daily Exhibit Letter 15" and "Daily Exhibit Telegram 16" were dictated to me by the petitioner, Milton Daily, and signed by the petitioner, Milton Daily, in my presence at his office in the City of Chicago, Illinois, on May 2, 1908.

The signature to each one of the letters and telegram last mentioned by me is the signature of Milton Daily, and is in the handwriting of Milton Daily.

Whereupon all and singular said letters and telegram marked respectively "Daily Exhibit Letter 4" to "Daily Exhibit Telegram 16" inclusive were offered and read in evidence, and are in the words and figures following:

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DAILY EXHIBIT LETTER 4, PAGE 419.

"CHICAGO, ILL., April 29th, 1908.

Mr. M. J. Smith, New York, N. Y.

MY DEAR MIKE: The 11.30 New York mail is in and nothing from you. Groendyke has just called up and read me your letter written on the 25th to Canadian. Fowler sent it here and is feeling pretty bad over your strictures regarding payment for the overweight. Groendyke says Fowler has no power to settle any matter for the Company and he does not think we ought to be quite so severe in our dealings, unless we are really fearful of losing something on the Canadian Cordage Company. I told him you did not know Fowler was without power to pay such accounts and that they would receive at all times proper treatment from all of us. He called my attention to the fact that Montes is not always on time in paying claims. He has one in now about two months old and Montes has never advised what his position is in regard to it.

Groendyke was a little out of humor when talking to me and said that if we are actually afraid of Canadian, he will try to make some other arrangements about paying, etc. I told him I had advised Montes there was no risk and that you and I had agreed that there was none so long as Jim Groendyke has control of the plant and its affairs. He still thinks there is something wrong with the weighing in New York.

I have no news for you, except Groendyke had a long telegram from Bauman last night, telling him what a good fellow he has found him out to be and saying that he can probably work one or two thousand bales of Sisal at $5\frac{1}{8}$ f. o. b. Mobile. He evidently has given up the idea of bringing suit against Groendyke.

Escalante offered Sisal yesterday at $5\frac{3}{4}$ f. o. b. New York and Groendyke has another telegram from him this morning wanting to sell 500 bales for shipment to Canadian. Groendyke thinks he will wait until the end of the week before buying.

Dayton is in New York and you will have seen him before you get this letter. He is going from there to Boston.

263

With nothing further today, I am

Sincerely yours,

MILTON DAILY."

DAILY EXHIBIT LETTER 5, PAGE 420.

"APRIL 29TH, 1908.

Licking County Bank & Trust Co., Newark, Ohio.

GENTLEMEN: Herewith find documents, consisting of Railroad bill of lading, invoice and Weighers' certificates, for 150 bales of

Sisal shipped by Avelino Montes S. en C., Merida, Yucatan, Mexico, to Messrs. E. T. Rugg & Co., your city.

Attached is draft against Messrs. Rugg & Co. for the 150 bales, in the sum of \$3,663.57, payable to my order and drawn at three days' sight. I have endorsed same to you.

Please collect and remit me in New York Exchange, and oblige.

Yours very truly,

MILTON DAILY."

"CHICAGO, ILL., April 29th, 1908.

The Hoover & Gamble Co., Miamisburg, Ohio.

GENTLEMEN: Enclosed find copy of letter from the Minnesota State Prison, requesting prices on machinery for their new plant. With this equipment they will have 250 jennies. I have not replied to this letter and will not until I hear from you, unless I simply acknowledge its receipt to the Warden and say that I have referred same to you.

I do not see how we can very well turn this contract to Watson. I have talked so much to Wolfer about it that he, I think, expects to give me the order. At the same time, I know he is figuring on second hand machinery. The last time I talked with him, he asked if our prices were any below \$250.00 on jennies and I told him no. I also told him of our 3-spindle automatic Baller, similar to the McCormick.

I think that if the arrangements were made that we are to take the contract, I could go up and secure it so we could go to work on it at once. Perhaps you had better wire Watson and say we will quote regular and they better quote high on this inquiry.

The South Dakota matter is liable to hang fire for two or three months yet and in the meantime we could have the Stillwater machinery built. You can write direct or write to me such letters as I can copy and either forward or take it with me. It will be necessary though, to have an understanding with Watson in the meantime.

Yours very truly,

MILTON DAILY.

M. D./W. E.

P. S.—I think perhaps I will write Wolfer in order to delay matters and say before quoting, I wish to go to factory and discuss the matter with you.

M. D."

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DAILY EXHIBIT LETTER 7, PAGE 422.

"APRIL 30TH, 1908.

Mr. W. H. Kind, Sec'y State Board of Charities, Parker, South Dakota.

DEAR SIR: Herewith find copies of letters from the superintendent of the twine mill at Jackson, Mich., one of the best in the United States. He is a graduate of the Boston School of Technology and his knowledge of anything connected with the installation of machinery in a twine plant and operating it, is thorough.

You will observe that only 112 spinners can be placed on second floor of your building and room left for the balling and baling of the finished product. This being the situation, I would suggest that you carry out your original ideas of a 100-spindle plant, and when you submit request for prices, it would be unnecessary to include the list which I left with you, embodying 120 spindles.

Regarding the power required for operating the plant, Mr. Brewer gives in detail what would be necessary if individual motors are used. At Jackson, only the heavy machines are operated by motors, the spinners all being run by belt and pulley from line shaft.

As stated to you when there, your superintendent would be the party to arrange all this and would be able to give you information as to any details necessary.

Regarding the different articles which you would require in the equipment will say, that I will secure the names and addresses of the firms furnishing these and give them to you at an early date.

Yours very truly,

MILTON DAILY."

266

DAILY EXHIBIT LETTER 8, PAGE 423.

"CHICAGO, April 30th, 1908.

Mr. J. B. Brewer, Jackson, Mich.

DEAR BREWER: I have received both your letters and note what you say regarding power, etc. at Sioux Falls. I will give the substance of what you say to the Board and then if there is anything else wanted, will call on you.

I think Wrentmore is acting piggish in exacting penalty for the breakdown, when we have been delayed there for some weeks in getting an acceptance on account of the blunder he made on the power question. I will certainly be glad when he has no more to do with the deal. I feel sure that Armstrong has wanted to be fair all along and would not want us to stand the charge Wrentmore makes for the little stop on account of the Breaker, if he were in control of the matter. It may be that he can overcome that anyhow and I hope he can.

I have letter from Wolfer, asking me to quote on 35 jennies and three 2-Spindle ballers, or two 3-spindle ballers. He also wants some preparation. He asks in particular what improvements we

have made on the spinners since his last purchase two years ago and what are the special features of the baller.

I think you can answer these questions better than Capt. Eminger. I have not kept up with them in detail, though will ask you to give me the information.

Yours very truly,

MILTON DAILY."

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DAILY EXHIBIT LETTER 9, PAGE 424.

"CHICAGO, April 30th, 1908.

DEAR MIKE: Yours of the 28th received this morning. I note what you say about the freight matter. Montes ought to have been more explicit with me, as if he had, I might have closed with Groendyke, but inasmuch as Escalante was quoting $5\frac{3}{8}$ cts. flat f. o. b. cars, it was impossible for me to sell at that figure with the chance of paying $\frac{1}{16}$ more. If the Ship Company holds out for $\frac{1}{4}$, it will put the charges back to about $\frac{3}{4}$, to where they used to be from Progreso to f. o. b. New York. It would seem that Escalante is not taking into account the increased freight rate, as he is still quoting $5\frac{3}{8}$ cts.

I wrote you yesterday about the Canadian weighing matter and up to this have had no talk with Groendyke. 11 A. M.

Jose Caballero has been here since last Friday; says he was sick in New York for nearly a month; had five carbuncles on the back of his neck and is still in rather bad shape.

Mendez will make a good manager for Bauman. It is better for us that Bauman has such a chap as that.

With nothing more to say, I will quit.

Yours very truly,

MILTON DAILY."

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DAILY EXHIBIT LETTER 10, PAGE 425.

"CHICAGO, May 1st, 1908.

Mr. George P. Smith, c/o Cook County Institution, Dunning, Ill.

DEAR SIR: Herewith find check for \$50.00 commission on \$500.00 note of Dr. B. H. Podstata, which was due January 1st, but time extended and was paid yesterday. Please acknowledge receipt for yourself and Henry Keller and oblige

Yours very truly,

MILTON DAILY."

DAILY EXHIBIT LETTER 11, PAGE 435.

"CHICAGO, May 1st, 1908.

Mr. Henry Wolfer, Warden, Stillwater, Minn.

DEAR SIR: I have received yours, requesting prices on machinery. Before replying, I want to go to Miamisburg and look into some matters, so as to be able to give you all the information you wish on improvements.

I am just in receipt of cable from Mr. Montes, advising me of the forwarding tomorrow by S/S Maliche to Mobile, 1000 bales of your May shipment and stating that the other 1000 bales will be shipped later on S/S Molina to Texas City.

The sisal market is very quiet and equal to about 5 9/16 f. o. b. Stillwater, May/June shipment.

Yours very truly,

MILTON DAILY."

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DAILY EXHIBIT LETTER 12, PAGE 426.

"MAY 1ST, 1908.

Mr. James D. Reid, Warden, Michigan City, Ind.

DEAR MR. REID: I have been intending to either write you or go over to Michigan City this week, but my rheumatism has prevented my going out very much. It is better and I hope to be entirely rid of it within the next three or four days.

Frank told me you had a friend who would like an interest in our Mexican Land & Timber proposition, provided there was one left. A party at Indianapolis who intended to take a full share, or invest \$4000., has so far only taken one-fifth of it, and there is an opening now for another party if he wants to come in and take a full interest. I have the same faith in it that I had when talking to you and if your friend wants to know more about the proposition, I will come over say, Tuesday morning and visit you and in the meantime have a little talk with him.

I have received today by express some samples of the wood and they are fine. If you write me to-morrow, I will get the letter Monday and act accordingly.

Sincerely yours,

MILTON DAILY."

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DAILY EXHIBIT LETTER 13, PAGE 428.

"CHICAGO, May 1st, 1908.

Mr. A. A. Tripp, North Vernon, Ind.

DEAR SIR: The samples of wood have arrived and they are very fine. Donald wanted to know what the other party I had in view was going to do and I am pleased to advise you that I have just received telegram from him, saying he will be here to-morrow with \$2000 to make his first payment. He wants a full interest. I have another man whom I think will come in for a full interest. If he does, it will make the six which you wanted me to secure, not including Dillman, whom I have thought would eventually take 500 shares. I have not heard from him since you wrote me regarding trading for his Chicago property, have you? I will be able to advise you early in the week as to whether the sixth party will come in.

Had letter from Gannon today, asking if I would like to take an interest in the Bancroft-Milroy Company in which he is interested and about which I suppose you have some knowledge. Do you know anything about it?

Yours very truly,

MILTON DAILY."

"CHICAGO, May 2nd, 1908.

DEAR MIKE: Yours of the last day of last month received the second day of this month.

I have read copy of your letter to Groendyke and am sure he will accept it in the same spirit as you wrote it. He knows very well that Canadian had fallen into disrepute as result of the way it treated its drafts and it is Groendyke's wish and intention to overcome the bad effect which that had upon the business standing of the Company. He is in Miamisburg, but will be here to-morrow morning and will leave in the P. M. for Peterboro. I expect to come down to his office for an interview and will write you result. I have nothing new.

Heidrich was here yesterday. I took him to the Club and spent all of four hours with him. He never once mentioned trying to "welch" on his contract. I think he felt ashamed of it. He insisted that he wants to buy 2000 bales sisal from me to finish the balance of his season's requirements.

Note what you say about Bauman and the New York market. You and I are of the same opinion as to what will happen during the next few days. I have thought for sometime we would see 5 ct. sisal f. o. b. New York or Chicago. At that equivalent there will be some good buying. I had not heard of the decline in Manila, but am not surprised. Manila rope declined one half cent this week. Trade is very dull in the rope line.

I could see the disgust on Ed. Butler's face when he got his \$100. per, 30 days. He was not in position to say anything, as his contract had expired and he had not made a new one, so whatever they wanted to give, was what he would have to accept. I think I can use him at that price in the story telling business.

Sincerely yours,

MILTON DAILY."

"CHICAGO, May 2nd, 1908.

Mr. Henry Wolfer, Warden, Stillwater, Minn.

DEAR SIR: The Yucatan market is weaker today, equal to 5½ cts. Stillwater. The indications are for a decline and we will probably get it before the end of next week. Only one thing will prevent that and that is, International being compelled to buy a large number of bales. I know they need sisal and it is only a question now whether they can hold out until the syndicate is ready to turn loose.

Yours very truly,

MILTON DAILY."

DAILY EXHIBIT TELEGRAM 16, PAGE 431

"CHICAGO, *May 2, '08.*

The Hoover & Gam-le Co., Miamisburg, Ohio:

Telegram received—I have no letter from Watson regarding Stillwater.

MILTON DAILY.

Paid.
Charge."

WITNESS: The letter dated Chicago, May 2, 1908, and marked "Daily Exhibit Letter 14" was dictated to me by Milton Daily in the forenoon of May 2, 1908. I know that fact because it is a letter addressed to Mr. Smith as "Dear Mike." The letters ad-
 273 dressed to Mr. Smith, whether addressed to him as "Dear Mike" or as "Mr. Smith" were always written in the morning. They were written in reply to letters which we received from him about 11:30 in the morning. The replies to the letters received from him were dictated at once and put in the mail in order that they might get off on the fast mail train which left Chicago about two o'clock in the afternoon.

The petitioner, Milton Daily, to my knowledge was in the City of Chicago, State of Illinois on May 12, 1908, May 13, 1908, and May 14, 1908. I know that Milton Daily was in the City of Chicago, Illinois, on May 12th, 13th and 14th, 1908, because of the letters and the signatures to the letters which appear in this Letter Copy Book on pages 458 to 470 inclusive. The letters and the telegram in this Letter Copy Book marked respectively "Daily Exhibit Letter 17", "Daily Exhibit Letter 18", "Daily Exhibit Telegram 19", "Daily Exhibit Letter 20", "Daily Exhibit Letter 21," and "Daily Exhibit Letter 22" were dictated to me by the petitioner, Milton Daily, and signed by the petitioner, Milton Daily in my presense at his office in the City of Chicago, Illinois, on May 12, 1908. The signature to each one of the letters last mentioned by me is the signature of Milton Daily, and is in the handwriting of Milton Daily.

274 Whereupon all and singular the letters and telegram marked respectively "Daily Exhibit Letter 17", "Daily Exhibit Letter 18", "Daily Exhibit Telegram 19", "Daily Exhibit Letter 20", "Daily Exhibit Letter 21" and "Daily Exhibit Letter 22" were offered and read in evidence, and are in the words and figures following:

DAILY EXHIBIT LETTER 17, PAGE 458.

"MAY 12TH, 1908.

Messrs. Avelino Montes S. en C., Merida, Yucatan, Mexico.

GENTLEMEN: Yours of the 1st inst., enclosing check on G. Am-sinck & Co., \$594.86, received and same credited as per statement. I find everything in order with the following exceptions:

You overlooked to include 500 bales sold to Canadian Cordage & Mfg. Co., March 18th and shipped via New York. You also missed the item of \$16.43 to my credit paid The Overman & Schrader Cordage Co. February 17th. On the other side of the ledger, I have you credited with \$132.26 received from Hibbard, Spencer, Bartlett & Co., and reported to you in my letter of February 3rd, first paragraph. These amounts you can make note of in remittance the end of this month.

Yours very truly,

MILTON DAILY."

DAILY EXHIBIT LETTER 18, PAGE 459.

"MAY 12TH, 1908.

Messrs. Avelino Montes S. en C., Merida, Yucatan, Mexico.

GENTLEMEN: Your esteemed favor of the 1st duly received, and I make note of contents.

Groendyke: Your letter to him arrived before mine and I read it. I suggested that he reply to same and leave the matter of allowance on the parcel of hemp, to you and he will doubtless do that. I did not know that he had made a formal claim on you, until yesterday. He says the claim was made up by comparison and the statement given to him by the superintendent.

On May 7th I asked you for quotation for this concern 700 bales sisal, second half May shipment. Your quotation of $5\frac{1}{2}\epsilon$ was too high and they bought from Escalante at $5\frac{3}{8}$ cts. I saw the telegram making this offer.

Peoria Cordage Co.: On May 7th I asked you for quotation for this concern and you quoted $5\frac{7}{16}$. They said the quotation was $\frac{1}{8}$ too high and placed their order elsewhere. I think with Escalante, although I am not yet in possession of positive information.

Canadian Cordage & Mfg. Co.: As per cables exchanged we sold this concern 500 bales at $5\frac{3}{8}$ cts. f. o. b. New York; said parcel being afloat on S/S Hugin. In the same telegram you quoted $5\frac{7}{16}$ for another parcel, second half May shipment. They replied that your offer was too high and made a counter offer of $5\frac{5}{16}$ f. o. b. New York. This you declined and they bought 1000 bales from Escalante. Mr. Groendyke told me yesterday that it was at a much less price than your quotation, but thought that he should not be giving me information when it was not doing him any good. I think the price was $5\frac{3}{8}$ cts.

General Business: All of these sales we could have had at com-

petitors' price, and referring to your letter of previous date, in which you request that I impress upon our clients the fact that you have been prepared at all times to supply their demands and that at equal quotations we ought to have their business, has had
 276 my careful attention. Groendyke told me yesterday that we could have his business and Canadian's at all times at the same price he could buy from others, but not more. Bauman is writing Groendyke every day and telling him he will sell him as low as he can buy anywhere and that he can pay for the sisal when he gets it at his factory. Escalante writes the same.

Peoria Cordage Co.: Since starting this letter Mr. Heidrich has called me up and said that he would buy another 500 bales per S/S Malinche if he could get it, but I could not tell him about the sailing, as I understood it left Mobile earlier last week, so I have cabled you for quotation for shipment on this steamer.

With nothing further by this mail, I am

Sincerely yours,

MILTON DAILY."

DAILY EXHIBIT TELEGRAM 19, PAGE 460.

"CHICAGO, May 12th, 1908.

Olega, Meida, Yucatan, Mexico.

Orgeis nielaban soulevons spurwort when will Molina sail for Texas City.

DAILY. 11.30 A. M.

Translation.

Make us firm offer f. o. b. Peoria 500 bales immediate shipment Please advise by telegram when will Molina sail for Texas City.

277 DAILY EXHIBIT LETTER 20, PAGE 461.

"CHICAGO, ILL., May 12th, 1908.

Mr. M. J. Smith, 82 Beaver Street, New York, N. Y.

DEAR MIKE: I have yours of the 11th. I am aggravated over Montes' instructions to collect charges on that 500 bales. Why did he not instruct you to collect on the 390 bales sold at the same price, and why not make the American pay on their 250 bales sold them? I shall not say anything about it to Groendyke until the matter comes to focus and will then be compelled to tell him that my understanding of f. o. b. New York has always been f. o. b. cars.

I have just been to Groendyke's office. Read your letter referring to the bill rendered for overweight. He was very much pleased at its contents. What you said to him regarding collecting on future shipments all right and clears up things in good shape.

Just had a call from Peoria, wanting quotation on 500 bales for immediate shipment. I believe that Escalante is unable to get the parcel which they bought from him, on the Malinche which is due

to arrive in Progresso the middle of this week. I have a feeling that Heidrich may have to buy some spot and if he does I will undertake to land the sale. He asked me when the Melina would arrive in Progresso on her next trip to Texas City.

I have no other news, except that I want to note that I mistrusted that Sykes was not telling the truth regarding the $5\frac{1}{4}\%$ offer. I asked him if it was firm and he answered it was. My belief is the same as yours, that some jobber had intimated that he might work that price.

Sincerely yours,

MILTON DAILY.

"MAY 12TH, 1908.

Messrs. Avelino Montes S. en C., Merida, Yucatan, Mexico.

GENTLEMEN: Mr. Smith has called my attention to your instructions to him to collect \$43.00 on the 500 bales sisal Ex Hugin for Canadian, which he explains is for weighing and loading charges.

You are certainly in error in giving Mr. Smith these instructions. I asked for quotations on this parcel f. o. b. New York, which is understood to mean by all manufacturers, f. o. b. cars and the other parcel which I sold to Canadian f. o. b. New York was net and they understand this to be the same. I confirmed the sale the day it was closed and stated the price was f. o. b. New York, so I do not see how we could construe that to mean anything else than f. o. b. cars.

Two weeks ago you gave me a quotation for them f. o. b. New York and stated that all charges after sisal arrived there would be for the account of Canadian, but you did not mention that in your offer in the case now in hand. You will remember that I asked for quotation for the last half of May. You gave a price of $5\frac{7}{16}\%$, saying freight would be higher. We lost that sale, because they could buy at $5\frac{3}{4}\%$ cts. and did buy from Escalanate 1000 bales. This information I cabled you yesterday.

Three or four years ago the question as to what f. o. b. Mobile meant, in a matter in which I think Stillwater was interested and it was decided it meant, on board cars—and has been so construed ever since. I should think that the code word stating "delivered at the port" would mean that charges after being discharged by the steamship company would be for the buyer's account.

I trust you will instruct Mr. Smith to abate this charge, as I am sure Canadian will not pay it. No other exporter, so far as I know, construes this meaning otherwise than, f. o. b. cars.

Yours very truly,

MILTON DAILY."

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DAILY EXHIBIT LETTER 22, PAGE 463.

"CHICAGO, May 12th, 1908.

Mr. Aaron Wenger, Ayton, Ontario.

DEAR SIR: Your favor of the 9th, copying letter which you received from the Brantford Cordage Company, to hand. I have duly noted contents and am not pleased over the remark of Mr. Messecar. It certainly involves my integrity. I think I advised you in previous letter that I paid the Hoover & Gamble Company the amount of the bill which I charged to you and if I did not say affidavit to that fact would be furnished both by myself and them if required, I intended to make that statement.

I am glad that Mr. Messecar wrote direct to the Hoover & Gamble Company. They will disabuse his mind of any doubt he has of the cost of overhauling those nippers.

Yours very truly,

MILTON DAILY."

WITNESS: The letters and telegram in this Letter Copy Book which appear on pages 464 to 466 inclusive, and marked respectively "Daily Exhibit Letter 23", "Daily Exhibit Letter 24", "Daily Exhibit Letter 25", "Daily Exhibit Telegram 26", "Daily Exhibit Letter 27" were dictated to me by the petitioner, Milton Daily, and signed by the petitioner, Milton Daily, in my presence at his office in the City of Chicago, Illinois, on May 13, 1908. The signature to each one of the letters last mentioned by me is the signature of Milton Daily and is in the handwriting of Milton Daily.

Whereupon all and singular said letters and telegram marked respectively "Daily Exhibit Letter 23", "Daily Exhibit Letter 24", "Daily Exhibit Letter 25", "Daily Exhibit Telegram 26" and "Daily Exhibit Letter 27" were offered and read in evidence, and are in the words and figures following:

DAILY EXHIBIT LETTER 23, PAGE 464.

"MAY 13TH, 1908.

Mr. C. Beers, #619 N. Halsted St., Chicago, Ill.

DEAR SIR: Yours of the 9th received yesterday. In our last talk I did say that I would wait a short time longer for a payment on Mr. Margrey's notes, but did not mean to convey the idea that the time would be indefinite. I said further, that I would make no move to collect, without notifying you.

Two of the notes are long past due,—one of them a year and a half and the other six months; another will be due November,—the 15th next and certainly I am entitled to the interest and the payment of one of the past due notes. The interest in the note is payable semi-annually but it has not been paid in this way. Up to May 15th this year, the interest is \$126.00, principal and interest \$1426.00.

I advertised this land for exchange some time ago and received

a few replies, none of which were worth considering, all heavily mortgaged property.

While I do not feel that I ought to be expected to give a discount, I will agree to allow you 5% on the amount due at the time you pay it, if you pay it in full. Please advise me very soon what I can expect.

Yours very truly,

MILTON DAILY."

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DAILY EXHIBIT LETTER 24, PAGE 465.

"CHICAGO, May 13th, 1908.

Mr. W. M. Ratcliffe, Brownsville, Texas.

DEAR SIR: Yours of the 9th with draft for \$105.00 and the various other matters as stated, received this morning. I note your agreement with A. W. Wood regarding the sale of Rancho Viajo and what you say in reference to the sale of the 40 shares of stock and certainly the transaction with Wood will be kept under cover.

Yours very truly,

MILTON DAILY."

DAILY EXHIBIT LETTER 25, PAGE 465.

"CHICAGO, May 13th, 1908.

Messrs. Frey Bros., #2022 E. Ravenswood Park, Chicago, Ill.

GENTLEMEN: I have yours of the 12th. Don't know who wrote it, but surely not one of the firm. Ever since you have been furnishing me coal, I have placed my order in April and you have delivered in my bins at \$7.25, sometimes not making delivery until June or July.

When I called up your office and placed this order I specifically stated that I expected the same terms as formerly, and otherwise would not have placed the order. After this explanation, if you insist I owe you \$4.00, I will send check for it.

Yours very truly,

MILTON DAILY."

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DAILY EXHIBIT TELEGRAM 26, PAGE 466.

"CHICAGO, May 13th, 1908.

E. T. Rugg & Co., Newark, O.:

Coachful eleventh opzeiner philone sporilo Newark seulier soste-neva straluni.

DAILY.

Translation.

We have received your letter of 11th. With firm offer in hand could probably buy at 5½ cts. delivered at Newark for immediate shipment. Steamer will leave our port the day after to-morrow. Reply immediately."

DAILY EXHIBIT LETTER 27, PAGE 466.

"CHICAGO, *May 13th*, 1908.

Messrs. E. T. Rugg & Co., Newark, Ohio.

GENTLEMEN: Your letter of the 11th inst., was not received until noon to-day. I immediately wired you as per enclosed copy. Vessel room from Progreso to Gulf ports is very scarce now and almost impossible to secure. The hemp market is growing firmer, demand increasing.

Yours very truly,

MILTON DAILY."

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WITNESS: The letters and telegram in this Letter Copy Book which appear on Pages 467 to 470 inclusive, and which are marked respectively "Daily Exhibit Letter 28," "Daily Exhibit Telegram 29," "Daily Exhibit Letter 30" and "Daily Exhibit Letter 31" were dictated to me by the petitioner, Milton Daily, and signed by the petitioner, Milton Daily, in my presence, at his office in the City of Chicago, Illinois, on May 14, 1908. The signature to each one of the letters last mentioned by me is the signature of Milton Daily, and is in the handwriting of Milton Daily.

Whereupon all and singular the letters and telegram marked respectively "Daily Exhibit Letter 28" "Daily Exhibit Telegram 29," "Daily Exhibit Letter 30," and "Daily Exhibit Letter 31" were offered and read in evidence, and are in the words and figures following, to-wit:

DAILY EXHIBIT LETTER 28, PAGE 467.

"CHICAGO, ILL., *May 14th*, 1908.

Mr. M. J. Smith, 82 Beaver Street, New York, N. Y.

DEAR MIKE: Yours of the 12th received. It seems a ridiculous proposition to present bill to Canadian for the \$43.00 charges when we know payment will be declined. Why should it not be just as well to anticipate that fact and not present it? It will not do Montes any good to make such a claim. I have not said anything to Groendyke about the matter but will remain passive until the storm breaks.

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I think I wrote you Peoria was inquiring for immediate shipment and that explains their asking Lent for price on 300 pot. Montes quoted 5 7/16 yesterday, delivered at Peoria, immediate shipment, and I called them up. Ed said they had bought 1000 bales from Peabody at 5 3/4 for 2nd half May shipment, but had asked him to give them 500 bales Malinche. He had replied that he was not sure he could get the vessel room but was to let them know early this morning. If he could not get the room, then they would buy 300 to 500 from me. I do not think there is any question about Peabody getting the room if it is available. He can get it just as well as Montes so far as I know and believe. You will

note that Montes is still quoting above Peabody and Escalante out here.

Michigan got a parcel of sisal from Peabody a short time ago, but the warden does not want to buy any more from him provided he can get it from us at the same price. His offer of 5 7/16 for 2nd half July shipment was a little better than 5.40 delivered Michigan City.

I understood Groendyke to say he bought 700 bales from Escalante but maybe it was 500. Peoria bought from Peabody. They say there has never been a time when Peabody would not quote them.

I have nothing more to tell you today.

Sincerely yours,

MILTON DAILY."

DAILY EXHIBIT TELEGRAM 29, PAGE 468.

"MAY 14th, 1908.

Olega, Merida, Yucatan, Mexico:

Sopruso Neoterice Philone Sporilo Newark Soulier Steenleer Foot fight Bestud Phelsuma.

Translation.

We have sold 150 bales 5½ delivered at Newark for immediate shipment. Please confirm sale. Peoria Cordage Co. have bought at 5¾.

DAILY.

Chge. acct. Milton Daily."

"MAY 14TH, 1908.

Peoria Cordage Co., Peoria, Ill.

DEAR SIRs: Not hearing from you this morning, I conclude that you had satisfactory reply from Peabody. I am just in receipt of advice that the Malinche arrived in Mobile yesterday with a full cargo for the International Harvester Co., and will start on the return to Progreso today, when she will take another cargo and arrive in Mobile with same about the middle of next week.

I believe that most of the cargo will be for the International. I have one parcel for Miamisburg.

I was in error in telling Ed. yesterday that the rate of freight from Texas City to Peoria is 23½¢. It is 20¢, same as to Chicago, but 23½¢ to the state points.

Yours very truly,

MILTON DAILY."

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DAILY EXHIBIT LETTER 31, PAGE 470.

"CHICAGO, ILL., May 14th, 1908.

Henry Wolfer, Warden, Stillwater, Minn.

DEAR SIR: I am just advised of the sailing of the S. S. Lorhein for Texas City with 500 bales Sisal for you, steamer expected to arrive at port next Monday.

Mr. Montes advises that the S. S. Molina will leave Progreso on the 18th and I think the other 500 bales of your purchase will be forwarded on that. The S. S. Malinche is making three round trips this month between Mobile and Progreso, two of its cargos being for the International Harvester Co. Vessel room is very hard to secure on account of the International having contracted the tonnage. I understand that the I. H. Co. will need to continue buying right along through this month and June and it is not now thought there will be any decline in the market below present price. It is much firmer and more demand.

Yours very truly,

MILTON DAILY."

WITNESS: By the words "letter copy book" wherever used in my testimony, I mean the book marked "Daily Exhibit Letter Copy Book."

Thereupon EMMA G. HOPP on Cross Examination by Mr. Thomas Barkworth, testified as follows:

Mr. Daily left the City of Chicago on the evening of April 6, 1908; I should say he went to Jackson, Michigan, on April 6th and returned from Jackson, Michigan, April 9, 1908. He was out of the City of Chicago, Illinois, April 7th and 8th, 1908.

287 Whereupon MILTON DAILY, the Petitioner, being duly sworn, was examined in chief by Mr. William S. Forrest, and testified as follows:

I am Milton Daily, the petitioner in this case, and the Milton Daily named in the requisition papers received in evidence and marked "Daily's Exhibit Requisition Papers". I live at 1624 Kenmore Avenue, Chicago, Illinois. My residence is about three blocks from the residence of Mr. Philip Stanhope, who appeared as a witness in this case, and about the same distance from 1310 Sheridan Road, probably not quite so far. I was born in Illinois, and have lived in Illinois since I was born, except during the years 1878 to 1891; during those years I resided at Indianapolis, Indiana. My place of business is now, and has been since the year 1900 at 115 Dearborn Street, Chicago, Illinois. Mr. Stanhope and Mr. Yeates, the witnesses in this case have now and for several years last past have had an office adjoining my office at 115 Dearborn Street, Chicago, Illinois. I had an arrangement in the year 1908 with Mr. Stanhope and Mr. Yeates with reference to their telephone. I have a key to their office which hangs on a nail in my office. They have asked me to look after their telephone calls; usually they do not close

their office door when they leave, but some times they do, then if there are any telephone calls I go in and attend to them. Mr. Stanhope and Mr. Yeates usually leave their office between four and half past four in the afternoon. I usually leave my office at about five o'clock. Almost invariably both Mr. Stanhope and Mr. Yeates called at my office at about eight o'clock in the morning, and asked if there had been any calls for them, or anything for them after they had gone away the day before.

The last time I was in the State of Michigan was April 7, 1908. I arrived at Jackson, in the State of Michigan on the evening of April 6, 1908, and left Jackson, Michigan on the afternoon of April 7, 1908. I have not at any time been within the State of Michigan since April 7, 1908. I was not within the State of Michigan on any day in the year 1908 prior to April 6, 1908. I was in the State of Michigan on November 14, 1907, and on the 22nd day of July, 1907. I was not in the State of Michigan on the 18th or 19th day of July, 1907, nor on any day in July, 1907, except July 22, 1907. On April 29, 1908 and April 30, 1908, and May 1, 1908, and May 2, 1908 I was in the City of Chicago, in the State of Illinois.

I hold in my hand the express delivery sheet marked "Daily Exhibit Express Receipt" and received in evidence in this case. My signature appears on that express receipt. My signature on that express receipt is the "Milton Daily" written under the column headed "By Whom Received." I wrote my signature on that express sheet at my office, 115 Dearborn Street, in the City of Chicago, Illinois, at the time the goods were delivered to me by the Adams Express Company namely on April 30, 1908. The goods delivered to me by the Adams Express Company on that day were samples of wood contained in a box and were delivered to me at my office in the City of Chicago, Illinois. I received that box of samples of wood from Mr. Tripp of North Vernon, Indiana. Mr. Tripp was the president of the San Jose Lumber Company, the lumber company that furnished those samples of wood. The name of the lumber company at that time was The Mexican Nevada Exploration Company, but it has since been changed to San Jose Lumber Company. Early in the forenoon, about nine o'clock I should say of May 1, 1908 that box of samples of wood was taken by me into Mr. Stanhope's office at 115 Dearborn Street. The box was then opened and the samples of wood inspected by us. I think I opened the box and Mr. Stanhope assisted me. That box contained samples of wood from Mexico. When those samples were taken out of the box they were placed upon Mr. Stanhope's desk, and they are there yet. When those samples were placed upon Mr. Stanhope's desk on the morning of May 1, 1908 Mr. Stanhope put notations upon each sample of wood, showing the kind of wood it was and the quantity of each which the company owned, and also the tract of land whereon it was found. On that morning of May 1, 1908 all the persons who were in Mr. Stanhope's office namely Mr. Stanhope, Mr. Yeates, Mr. Hoyer and I had a conversation about those samples of wood, that conversation concerned the quantity of wood we had, the kind we had,

what could be done with it and what the profits would be when it was worked out. Mr. Stanhope, Mr. Yeates, Mr. Hoyer and I had invested in the proposition with Mr. Tripp and we were discussing that proposition in a general way, namely: its location, how long it would take to work it out and incidentally if we could not get one or two others interested in it with us. It was quite a good sized tract of land, about 70,000 acres. That conversation occupied substantially the entire forenoon. I alternated that forenoon between the office of Stanhope and Yeates and my office; sometimes I would be called into my office to see some person who had called for me there, but generally that forenoon we were in Mr. Yeates' office until lunch time. Some of us went one way to get our lunch and others went another way, but when we got through our lunch we returned to the office of Stanhope and Yeates and continued the discussion of the timber proposition. The conversation in the after-

noon was substantially the same as in the forenoon. Mr. Eng
291 called at the office in the afternoon and participated in the conversation. I know that that conversation about those samples of timber occurred in the office of Stanhope and Yeates in the City of Chicago, Illinois on May 1, 1908 because that conversation occurred on the day following the delivery of those samples of timber to me, which samples of timber I received on April 30, 1908, but I have other ways of knowing that I was in the City of Chicago, Illinois on May 1, 1908, namely: my business transactions.

The deposit slip marked "Daily Exhibit Deposit Slip" introduced and read in evidence in this case is a deposit slip deposited by me in the Northern Trust Company Bank in the City of Chicago, Illinois, on May 1, 1908. That is a deposit slip of Milton Daily, Trustee. The handwriting on the face of that deposit slip is my handwriting, and I put that handwriting on that deposit slip in the City of Chicago, Illinois, on the first day of May, 1908, and then took the deposit slip over to the bank. When I deposited that deposit slip in the bank on May 1, 1908, at the same time I delivered to the Northern Trust Company Bank the sum of \$507.50; that is the deposit slip which was made out by me on May 1, 1908, and which accompanied that deposit. With reference to the time of day on which

I made that deposit, all that I can say is, that I usually went
292 to the bank at the lunch hour, about twelve o'clock. That bank closes at three o'clock in the afternoon. This is the original deposit slip.

This check for \$50.00 which I now hold in my hands is marked "Daily Exhibit Check." It is a check on the Northern Trust Company Bank, Northwest Corner of La Salle and Monroe Streets, in the City of Chicago, Illinois. The signature on that check, "Milton Daily, Trustee" is my signature signed by myself; that signature was signed by me in the City of Chicago, Illinois on May 1, 1908. The payee of that check, Geo. P. Smith, is one of the attendants at the Dunning Insane Asylum in Cook County, Illinois. I was paying that Mr. Geo. P. Smith some commissions on the sales of land that he made for the Brownsville Irrigation Company, of which I am Trustee. This check for \$50.00 which I hold in my hand and

which is marked "Daily Exhibit Check" was paid. I have received a letter from Smith respecting that check. The letter is the acknowledgement of the receipt of that check. That letter is marked "Daily Exhibit Smith" and is dated May 5, 1908. This letter marked "Daily Exhibit Smith" is the receipt for the \$50.00 check which I have just identified and is in the handwriting of Mr. Geo. P. Smith, the man to whom I sent that check for \$50.00. I received this letter from Mr. Geo. P. Smith in the due course of the mail.

293 Whereupon said check marked "Daily Exhibit Check" was offered and read in evidence, and is in the words and figures following:

DAILY EXHIBIT CHECK.

"CHICAGO, *May 1st*, 1908. No. 12.

The Northern Trust Company.

N. W. Cor. La Salle and Monroe Streets.

Pay to the order of Geo. P. Smith \$50.00 Fifty Dollars.

MILTON DAILY, *Trustee.*"

On the back of said check the following words and figures appear, to-wit: "Geo. P. Smith, Nellie Smith. (Stamp.) Paid through Chicago Clearing House. 23. May 11, 1908. To the Central Trust Company of Illinois."

The following words and figures are perforated through said check, to-wit: "Paid 5 11 08"

294 Whereupon said letter marked "Daily Exhibit Letter Smith" was offered and read in evidence, and is in the words and figures following:

"Dunning, Ill.

Cook County Institutions.

Hospital for Insane,
Hospital for Consumptives,
Infirmiry.

O. C. Wilhite, M. D., General Superintendent.

DUNNING, 5/5, 1908.

Milton Daily 115 Dearborn St., Chicago.

DEAR SIR: Yours of 1st enc. ck. for \$50—rec'd for which please accept thanks.

Pardon delay in acknowledging.

I am Yours truly,

GEO. P. SMITH."

295 WITNESS: That check marked "Daily Exhibit Check" was filled out by me in my handwriting at my office, 115 Dearborn Street, Chicago, Illinois, on the first day of May, 1908, and on the 1st day of May, 1908 was enclosed in the letter marked "Daily Exhibit Letter 10" and then that letter was mailed by me on that day in the city of Chicago, Illinois.

On May 2, 1908 and on May 12, 1908 I was in the City of Chicago, Illinois. I am acquainted with the firm of Hoyer & Company, whose place of business is 1310 Sheridan Road, Chicago, Illinois. I transacted business with Mr. Edward C. Hoyer of that firm on the 12th or 13th of May, 1908. I don't know which day, at Mr. Edward C. Hoyer's office, 1310 Sheridan Road, Chicago, Illinois. Mr. Hoyer had some business that he wanted to submit to me and talk over with me, and I was at his office for that purpose. I was at the office of Mr. Edward C. Hoyer, 1310 Sheridan Road, Chicago, Illinois on more than one evening in the middle of May, 1908. One of the things that I talked with Mr. Edward Hoyer about at that time was the exchange of property. I had a proposition to exchange my improved property at 1334-1336 Byron Street, Chicago, Illinois, for some vacant property over on the west side; I didn't know much about it and I wanted to see Mr. Hoyer and talk to him about it, and

I did talk to him about it at that time. He advised me not
296 to make exchange. On the night that I was at Mr. Edward Hoyer's office at 1310 Sheridan Road, Chicago, Illinois, I called at the house of Mr. Philip W. Stanhope, who has been a witness in this case. On that evening I went to Mr. Philip W. Stanhope's house between seven and eight o'clock. On the evening when I went from Mr. Hoyer's office to Mr. Stanhope's house, about the middle of May, 1908, I met Mr. Geo. H. Cohlgraff at his office, at 1310 Sheridan Road, Chicago, Illinois. On that evening I said to Mr. Geo. H. Cohlgraff in his office that I wanted to see Mr. Hoyer. I do not remember of anything else that I said to Mr. Geo. H. Cohlgraff at that time. On that evening Mr. Geo. H. Cohlgraff and I separated at the corner of Sheridan Road and Graceland Avenue, and as we separated I told him that I was going to call upon Mr. Stanhope.

I hold in my hand the Letter Copy Book marked "Daily Exhibit Letter Copy Book." This Letter Copy Book is the record of my letters at my office, 115 Dearborn Street, Chicago, Illinois. I dictated the letter marked "Daily Exhibit Letter 4" on page 419 of this Letter Copy Book to Emma G. Hopp, my stenographer, at my office, 115 Dearborn Street, Chicago, Illinois, on April 29, 1908, and I also signed that letter "Milton Daily" at my office, 115 Dearborn Street, Chicago, Illinois on April 29, 1908. On the same day, April
29, 1908, at my office, 115 Dearborn Street, Chicago, Illinois,
297 I also dictated to my stenographer, Emma G. Hopp, and signed the letters marked respectively "Daily Exhibit Letter 5", "Daily Exhibit Letter 6" which appear on pages 420-421 of this Letter Copy Book marked "Daily Exhibit Letter Copy Book."

I spent the night of April 29, 1908 at my home in the City of Chicago, Illinois. I spent the first day of May, 1908 in the City of

Chicago, and the night of May 1, 1908 at my home in the City of Chicago, Illinois. I was in the city of Chicago, Illinois throughout April 30, 1908, and at my home on the night of April 30, 1908. I was in the City of Chicago, Illinois throughout the day of May 12, 1908, and spent the night of May 12, 1908 at my house in Chicago, Illinois. I was also in the City of Chicago, Illinois throughout the day of May 13, 1908 and throughout the day of May 14, 1908, and spent the night of May 13, 1908, and the night of May 14, 1908 at my home in Chicago, Illinois.

On April 30, 1908 at my office, 115 Dearborn Street, Chicago, Illinois, I dictated to Emma G. Hopp, my stenographer, and signed the letters marked respectively "Daily Exhibit Letter 7", "Daily Exhibit Letter 8" and "Daily Exhibit Letter 9" which are found on pages 422-423 and 424 of this Letter Copy Book marked "Daily — Letter Copy Book."

298 At my office, 115 Dearborn Street, in the City of Chicago, Illinois, on May 1, 1908 I dictated to Emma G. Hopp, my stenographer, and signed the letters marked respectively "Daily Exhibit Letter 10", "Daily Exhibit Letter 11", "Daily Exhibit Letter 12" and "Daily Exhibit Letter 13" which appear on pages 425-426-428 and 429 of this Letter Copy Book marked "Daily Exhibit Letter Copy Book."

At my office, 115 Dearborn Street, in the City of Chicago, Illinois, on May 2, 1908, I dictated to Emma G. Hopp, my stenographer, and signed the letters marked respectively "Daily Exhibit Letter 14", "Daily Exhibit Letter 15" and "Daily Exhibit Telegram 16" which are found on pages 429-430 and 431 of this Letter Copy Book marked "Daily Exhibit Letter Copy Book."

At my office, 115 Dearborn Street, in the City of Chicago, Illinois, on May 12, 1908 I dictated to Emma G. Hopp, my stenographer, and signed the letters and telegram marked respectively "Daily Exhibit Letter 17", "Daily Exhibit Letter 18", "Daily Exhibit Telegram 19", "Daily Exhibit Letter 20", "Daily Exhibit Letter 21" and "Daily Exhibit Letter 22" which are found on pages 458-459-460-461-462 and 463 of this Letter Copy Book marked "Daily Exhibit Letter Copy Book."

299 At my office, 115 Dearborn Street, in the City of Chicago, Illinois on May 13, 1908 I dictated to Emma G. Hopp, my stenographer, and signed the letters and telegram marked respectively "Daily Exhibit Letter 23", "Daily Exhibit Letter 24", "Daily Exhibit Letter 25", "Daily Exhibit Telegram 26" and "Daily Exhibit Letter 27" which are found on pages 464-465 and 466 of this Letter Copy Book marked "Daily Exhibit Letter Copy Book."

At my office, 115 Dearborn Street, in the City of Chicago, Illinois on May 14, 1908 I dictated to Emma G. Hopp, my stenographer and signed the letters and telegram marked respectively "Daily Exhibit Letter 28", "Daily Exhibit Telegram 29", "Daily Exhibit Letter 30" and "Daily Exhibit Letter 31" which are found on pages 467-468-469 and 470 of this Letter Copy Book marked "Daily Exhibit Letter Copy Book."

All the letters in this Letter Copy Book marked "Daily Exhibit

Letter Copy Book" which are signed "Milton Daily," and which bear date respectively April 29, 1908, April 30, 1908, May 1, 1908, May 2, 1908, May 12, 1908, May 13, 1908 and May 14, 1908 were dictated by me to Emma G. Hopp, my stenographer, and signed by me at my office, 115 Dearborn Street, Chicago, Illinois, on the dates which they respectively bear. My signature is "Milton Daily."

300 I remember a bid which is dated July 19, 1907, and a copy of which is found among the requisition papers in this case; that bid dated July 19, 1907 was written by me personally at my office, 115 Dearborn Street, in Chicago, Illinois. My recollection is that that bid was sent by me into the State of Michigan by mail. By the bid dated July 19, 1907 I mean the bid dated Chicago, Illinois, July 19, 1907, which is made a part of the contract recited in one of the indictments which accompany the requisition papers in this case. Throughout the day of July 19, 1907 I was in the city of Chicago, Illinois.

Whereupon MILTON DAILY on Cross Examination by Mr. Thomas Barkworth testified as follows:

I do not have copied into my Letter Copy Book all of my letters. There is not in my Letter Copy Book any letter to Allen N. Armstrong dated May 12, or May 13 or May 14, 1908. I do not remember writing a letter on any one of those dates to Allen N. Armstrong. I made the acquaintance of Allen N. Armstrong in the early part of 1907 in Jackson, Michigan. He was then Warden of the Michigan State Prison at Jackson, Michigan. The first interview which I had with Allen N. Armstrong respecting the binder twine plant in the prison at Jackson, Michigan was in Jackson, Michigan

301 in the month of January or February, 1907. It was while the Michigan Legislature was in session. Between the time of that first interview with Allen N. Armstrong and the 22nd day of July, 1907 I probably had three interviews with Allen N. Armstrong. The first of those three interviews was at Jackson, Michigan when I met him and the Board of Control and the Governor of Michigan, and was in May, 1907, I should say. The second of those three interviews with Allen N. Armstrong was at Michigan City, Indiana—that was the occasion of my visit with Governor Warner of Michigan and Mr. Wolfer, the Warden of the penitentiary at Stillwater, Minnesota to the Indiana State Prison at Michigan City, Indiana for the purpose of investigating the binder plant at the last named prison. The purpose of our meeting at that time at the Indiana State Prison was to enable Governor Warner of Michigan, and Mr. Allen N. Armstrong to obtain information regarding the manufacture of twine in prisons. I don't think I met Allen N. Armstrong in Jackson, Michigan after the meeting just spoken of at the Indiana State Prison until November, 1907. I do not recall that I was in Jackson, Michigan in June, 1907. I was not in Jackson, Michigan in July, 1907. I was in Michigan on the 22nd day of July, 1907. I was not present at any meeting in

Michigan in July, 1907 earlier than the 22nd day of July, 302 1907. I was in Detroit, Michigan on July 22, 1907 when the bid was considered. I was not at a prior meeting at any place in Michigan when that bid was requested. The meeting on July 22, 1907 was at the office of Mr. Navin in Detroit, Michigan. Mr. Navin was a member of the Board of Control of the State of Michigan. That meeting was held for the purpose of considering the bids which had been made for the machinery. At that meeting of July 22, 1907 in Detroit, Michigan there were present Allen N. Armstrong, Governor Warner, Mr. Wrentmore, Consulting Engineer for the State of Michigan, Mr. Navin, Mr. Quinn and another member of the Board of Control whose name I do not now recall. I am not sure whether or not the entire Board of Control was present at that time or not. On that occasion I went to Detroit, Michigan from Chicago on the night of July 21, 1907 and arrived at Detroit, Michigan on the night of July 21, 1907 or on the morning of July 22, 1907; I think I arrived there, however, some time during the night before. I did not meet anybody on July 21, 1907 in connection with the deal. I met none of the parties until the meeting of July 22, 1907, and at that time I met in Detroit the parties I have already mentioned. There was not much discussion at that meeting. The bids were opened and I was told that the contract 303 was awarded to the Hoover & Gamble Company. I don't think that we were in the office of Mr. Navin an hour altogether. I left Detroit, Michigan for my home in Chicago about one o'clock on July 22, 1907 in company with Mr. Wrentmore. Mr. Wrentmore and I dined together that day on the train. I remember that the bid referred to in my testimony begins with these words: "Complying with your request", that "request" was conveyed to me orally by Mr. Allen N. Armstrong. I had previously made a bid in writing in my own name through the mail, from Chicago, Illinois. I did not at any time discuss with the Board of Control the matter of my previous bid. The bid dated July 19, 1907 is not the only bid that was considered by the Board of Control on July 22, 1907; there were other bids there, how many I don't recall. My bid of July 19, 1907 was modified by adding some machinery to it and taking one machine from it.

After July 22, 1907 I was not again in Michigan at any time until the middle of November, 1907. I went to Jackson, Michigan in the middle of November, 1907 because Mr. Allen N. Armstrong had requested me on the telephone to come over there. He said that he wanted to see me about the congested condition of the warehouse, they had been receiving sisal and had it stored all over the town and they were paying storage on it, and he said he could 304 not just explain the situation and he wanted me to come over and see if I could not help them out in some way. I went from Chicago, Illinois to Jackson, Michigan on the night of November 13, 1907, and on the morning of November 14, 1907 I went out to the prison at Jackson, Michigan after getting breakfast, and then Mr. Allen N. Armstrong told me that the building to contain the machinery for the making of twine was not finished, and

that it would not be finished for some time, that the machinery was coming in, that it was very heavy, that they were storing it in the warehouse where they intended to keep the twine and the fiber, that it was full, and that he wanted to have me try to stop the further shipment of machines and hemp. Up to that time the Board of Control of the State of Michigan had already bought something like 4000 bales of sisal. They bought those 4000 bales of sisal because the sisal was cheap. I saw that the Board of Control and Allen N. Armstrong were in a bad shape as regards the storage. I remained there out at the warehouse possibly an hour and a half. Mr. Allen N. Armstrong did not go with me. He put me through the door and told the guard to remember when I came back to let me come through. I returned to the City of Chicago, Illinois from

305 Jackson, Michigan on the 10:15 or 10:20 train on November 14, 1907. I did stop the further shipment of machinery and I also had a thousand bales of sisal detained that were coming in to Mobile and put in storage in Mobile in order to help out the Michigan parties. On my visit to Jackson, Michigan on November 14, 1907 I saw Mr. Allen N. Armstrong and also Mr. Brewer, the superintendent of the binder twine plant; I think also that I saw some of the help around the office when I went in. I didn't see Dick Meyer or Bernard Meyer on that occasion. I think that Bernard Meyer was in the building there but I do not remember seeing him at all, but I knew him. I arrived in Jackson, Michigan on November 14, 1907 about seven or half past seven o'clock in the morning, and immediately after eating my breakfast I went to the prison, and I left Jackson, Michigan again that morning between ten and eleven o'clock, and arrived in the City of Chicago, Illinois about three or four o'clock in the afternoon of November 14, 1907. On November 14, 1907 at Jackson, Michigan I had that conversation with Warden Allen N. Armstrong regarding the congested condition of things and that they were not getting along with the warehouse as well as they expected and that it would not be completed as soon as they expected and they had to have relief,

306 and back of that was some shipment of sisal ahead of time, and inasmuch as they had gone in ahead of time, Warden Armstrong said he thought that we were really under obligations to help him out. The sisal of which I stopped the shipment at that time was in a ship afloat on the Gulf of Mexico and in transit to Mobile, Alabama. I had that sisal stored at Mobile, Alabama as soon as I could. I stopped the shipment of it to Jackson, Michigan through the house of Montez & Co. I did that as soon as I could communicate with Montes & Company. A few weeks afterwards I was in Mobile, Alabama and the sisal was then there. I was in Mobile, Alabama that time on my way to Yucatan.

Dick Meyers was the representative of Hoover & Gamble at the prison in Jackson, Michigan. The contract was Hoover & Gamble's contract. I communicated with Hoover & Gamble between July 19, 1907 and July 22, 1907. There was no other representative of Hoover & Gamble at the meeting in Detroit on July 22, 1907 except me. The bid of July 19, 1907 was sent in to the Board of Control

in my name. The previous bid was in my name also. I signed Hoover & Gamble's name to the bid; while I did not sign it as agent I was acting as their agent. Hoover & Gamble fulfilled that contract; they fulfilled that contract by the shipments of
307 machinery that went to Jackson, Michigan. The machinery was shipped by the Hoover & Gamble Company. I did not ship a part of that machinery. I bought a part of that machinery at Ayton, Canada. I did not furnish the part of the machinery bought by me at Ayton, Canada but Hoover & Gamble did. I knew that Hoover & Gamble furnished the machinery which I had purchased at Ayton, Canada. The machinery purchased by me at Ayton, Canada and shipped to Jackson, Michigan had been used a little, some of it had been used a little and some of it had not been used at all but all of the machinery which I purchased at Ayton, Canada had been set up. I learned about the conclusion reached by the Michigan Board of Control with regard to the first bid through Mr. Allen N. Armstrong.

Q. You learned, did you not that they (the Board of Control of the prison at Jackson, Michigan) had declined to purchase the second hand machinery?

A. Well, I will have to explain a little, I presume, to answer that question.

Q. Go on Mr. Daily.

A. They had told me previously that they wanted that Ayton machinery; Armstrong particularly had said it would take so long to build a system and the building was already in process of construction, and that was already to ship and that he had been
308 told not only by one but by another, Mr. Wolfer, that the Ayton machinery was as good or better than new machinery and he wanted it. I also had talked to the Governor and the Board of Control about it. There was no secret, and the bid which I presented in the first place included the Ayton machinery very distinctly and stated how it would be done. They had their meeting in my absence. The latter stated that part was Ayton machinery and part would be made by Hoover & Gamble. I had told them that the Ayton machinery was new. It had been used only a few days, and some of it had not been used at all. When Mr. Armstrong came here after they had their meeting he came to my office and told me that they had turned down that bid including the Ayton machinery because they were afraid the International Harvester Company would use it against them; that the International Harvester Company would say that the State of Michigan had bought old machinery and that the State of Michigan could not afford that, but that if I would throw \$3000 off the price they would take it, and I replied that I wouldn't do that.

WITNESS: I did not have any discussion with the Board of Control regarding it. On the 22nd of July, 1907 I did not stop at Jackson, Michigan, and I did not on that day have any conversation with Allen N. Armstrong other than the conversation
309 which was had before the Board of Control; I am very positive about that. The only conversation that I had July 22,

1907 regarding the machinery was in the office of Mr. Navin at Detroit, Michigan. I met Allen N. Armstrong on that day outside of the office of Mr. Navin and before the meeting in Mr. Navin's office. I think I met him on that day at the Wayne Hotel. I did not have a considerable conference with Allen N. Armstrong on that day at the Wayne Hotel. We walked up from the Wayne Hotel to Mr. Navin's office but we did not talk on the machinery proposition at all, not a word. The contract was not signed by the Board of Control until August, 1907—probably 30 days after the contract was accepted by the Board of Control. I remember that the Board of Control instructed Mr. Armstrong to notify the Hoover & Gamble Company that their bid had been accepted so that they might go to work. The Ayton machinery had not been shipped at that time, and was not shipped until quite a little while after that time, I don't know just how long. It had to be loaded. Hoover & Gamble sent a man there to load it carefully and ship it down to Miamisburg, Ohio. Hoover & Gamble's purpose was to have every machine that went to Jackson, Michigan just the same. Some of the machines they had in store at Miamisburg, Ohio before they went to Jackson, Michigan. The Ayton machinery was repainted and was sent to Miamisburg, Ohio for the purpose

310 of being repainted and every new improvement that was put on the machine was put on there at Miamisburg, Ohio; then the Ayton machinery was shipped from Miamisburg, Ohio to Jackson, Michigan with the machines that Hoover & Gamble constructed. There was some machinery at Jackson, Michigan on November 14, 1907 when I was there, but I did not examine it. The warehouse was full of hemp and they were putting machines in the warehouse, which they wanted to avoid. I did not examine the machines in the warehouse at Jackson, Michigan on November 14, 1907, but I could see that they were Hoover & Gamble's machines. No man could recognize the machines that came from Ayton, practically every machine is the same. I did not recognize the machines as the machines that came from Ayton. It is not true that there were worn shafts on those machines at that time, namely, November 14, 1907; it could not be that the shafts were worn in machines that were running for thirty or forty days because we run them in our shops a week or ten days before they are shipped away. It would be impossible for the shafts in the Ayton machines to be worn. The old numbers remained on the machines which came from Ayton. The Ayton machines were not re-numbered consecutively, only by those old numbers could the machinery be recognized as the machinery that came from Ayton, Canada.

311 I think that all of the machinery complied with the contract. There were two geared spinners among the machinery delivered at Jackson, Michigan. I didn't see the two geared spinners. I do not know whether the two geared spinners came from Ayton. The two geared spinners were not in Jackson, Michigan when I was there in November, 1907; I am sure of that, that is, I know I did not see them. The Hoover machinery was there but I didn't see any spinners on that trip in November, 1907. It is not true that the

spinners are always the first shipment made, whether the spinners are shipped first depends upon the character, and what you have got ready and how you can load the car. I don't know that the machinery was received at Jackson, Michigan at a time when it was not expected. I know that Allen N. Armstrong told me that the condition of things there was such that they would have to have relief and he appealed to me to get the relief for him. The machines were being put in the storage house as they came in,—the storage house was quite a distance from the building where they intended to install the machinery and where it is installed now. On November 14, 1907 I was both in the storage house and in the building where the machinery is now installed. Some of those machines weigh

eight or nine thousand pounds, and it would be pretty hard to
312 move them from the storage house over to the building where they would be operated and Allen N. Armstrong told me it was going to work a hardship and also that they could not take care of them. I had made the Hoover & Gamble contract with the Board of Control and naturally Allen N. Armstrong knowing me would appeal to me for help because I was the agent of the Hoover & Gamble Company. He thought that I could do that better than he could. The Hoover and Gamble Company did not have an agent directly on the job. Dick Meyers was not on November 14, 1907 the agent of the Hoover & Gamble Company. Dick Meyers was not in Jackson, Michigan until the Michigan people were ready to install the machinery in the building and to put it into operation, but Mr. Brewer was there on November 14, 1907. I have known Mr. Brewer a good many years. Brewer obtained his employment at the binder twine plant at Jackson, Michigan through my recommendation of him, and I recommended him because he was a good man.

I was again at Jackson, Michigan in April, 1908. At that time about two thirds of the plant had been put in operation. At that time the Ayton machinery was there, but whether the Ayton machinery was all in operation or not I don't know. I couldn't tell which were the Ayton machines. I could tell the geared spinners:

they would be the only things I could tell that were there, but
313 whether they were there in April, 1908 I don't know, and

I don't know where they were located. The Board of Control was also at Jackson, Michigan when I was there in April, 1908. Governor Warner was there also. I walked through the plant with Governor Warner. He was delighted with it and thought that he had the finest plant in the world. Wrentmore was there at that time, and Mr. Merriman of the Board of Control was there; whether Mr. Quinn or Mr. Navin of the Board of Control was there I don't know. Mr. Eminger, the secretary of the Hoover & Gamble Company was also there at that time.

Q. What was your purpose there at that time (April, 1908)?

A. It was always our intention and idea to go to see all plants when they are put in operation. We were at Michigan City when the plant there was put in operation, very soon after, to see that everything was working right.

WITNESS: I was not at Jackson, Michigan in April, 1908 at anybody's instance. I didn't know that I was going to meet the Board of Control there at that time. I don't remember that there was any arrangement made to meet the Board of Control there at that time. Mr. Eminger and I made the arrangement to meet there and look over the plant. I don't think that I had seen Allen N.

Armstrong in the interval between November 14, 1907 and
314 April, 1908. In April, 1908 I was in Jackson, Michigan over night. I arrived there in the afternoon and in the evening I met Mr. Eminger and we spent the evening at the hotel. We did not see any of the Board of Control that night, and we went out to the prison plant the next day. I did not see Allen N. Armstrong on that evening, or Mr. Bernard Meyer. I did see Mr. Brewer at that time at the hotel in the evening. The next morning Mr. Eminger and I went out to the prison plant. When we arrived at the prison plant I think that we met Allen N. Armstrong and the Governor and the Board of Control and Mr. Wrentmore all about the same time. I am sure that Mr. Wrentmore was there on that occasion. Mr. Eminger and I stayed at the prison plant until about eleven o'clock, and then we went out to Mr. Navin's for dinner. We did not return to the prison in the afternoon. My only visit to the prison on that occasion was during the forenoon. We all, that is the governor, Mr. Merriman, Mr. Wrentmore, Mr. Allen Armstrong, Mr. Eminger and I walked through the plant. There were none of us that were particularly together. We went through the plant by ones or twos. I have known Bernard Meyer personally a year or two.

MR. THOMAS BARKWORTH:

Q. Did you talk with Bernard Meyer on your visit there on the sixth and seventh days of April, 1908?

315 MR. WILLIAM S. FORREST: I object to that question upon the ground that it is not cross examination.

MR. THOMAS BARKWORTH: It is proper cross examination, I insist, upon the theory that Mr. Daily's conversations on that occasion, the opportunities he had for covering up the fraud which we claim was being there perpetrated, and which was part of the plan through which Warden Armstrong was carrying out the purpose which they had corruptly designed, was known to the parties there at that time, and that visit of these gentlemen had to do with passing that machinery, notwithstanding the fact that knowledge was had relative to it and that they were there for that purpose.

Which objection was sustained by The Court, to which ruling of The Court in sustaining said objection the counsel for the respondent then and there duly excepted.

WITNESS: One evening in the spring of 1907 I met at Jackson, Michigan by appointment all the Board of Control and also the governor. That evening in the spring of 1907 was prior to June, 1907, or it might have been early in June, 1907. The bill authorizing the establishment of the binder twine plant at the Michi-

gan prison had been passed at that time, and I think there was some question as to whether or not it was constitutional, it was said that there was some defect in the bill. The Board of Control
316 made the contract because they believed that the defect in the bill could be rectified. There was something in the wording of the appropriation, I believe, that was questionable, and it was referred to the Attorney General's office, and the Board of Control and the governor believed that the Attorney General's opinion would be favorable, so they went ahead, as I understand it, and let the contract and put up the building.

I purchased the plant at Ayton, Canada early in January, 1907. I don't remember whether or not the Michigan Legislature was in session at that time. I don't know exactly how much of the machinery installed at the prison in Jackson, Michigan came from Ayton, Canada, but I should say about half of it. In the completed plant at Jackson, Michigan there were 120 spindles—which means 60 spinners. A spinner is a double spindle. The Ayton plant had 60 spindles, 30 spinners, so that precisely half the spinner capacity of the Ayton plant was installed at the plant in Jackson, Michigan. I am not sure whether the rest of the machinery required to be duplicated or not. There might have been one big breaker that was not necessary.

My purpose in visiting Detroit, Michigan on July 22, 1907 was this—Mr. Armstrong had told me that the Board would meet on that day and consider the bids and award the contract. I
317 was not sure whether the contract would be awarded upon our bid; there is competition in those things. My purpose was to be there and if any questions were asked I could answer them. We never submit a bid for a contract without accompanying the bid; that is, going with it, or being present when it is opened. I was not present when the previous bids were opened. The previous bid made by me was my bid, but I am now speaking of the Hoover & Gamble bid which was opened on July 22, 1907. On the occasion when the first bids were opened I had a bid in with Hoover & Gamble's knowledge that I was going to bid on the Ayton machinery in connection with theirs. The Hoover & Gamble people require me always to go and be present when their bids are opened and being considered. I did not put in a bid in Hoover & Gamble's name for all new machinery which was considered prior to July 22, 1907. I don't remember whether Hoover & Gamble put in a bid at the time I put in my previous bid. If the Hoover & Gamble company put in a bid at that time I don't remember it. I know, however, that I put in a bid at that time. I accompanied my bid on that occasion because I had been there and explained to them what the Ayton machinery was, and they understood exactly what it was. Nobody was present representing either me or Hoover & Gamble when the bids went in on the first occasion, but when the Hoover & Gamble bid went in for nearly all new machinery I was there, that is, on
July 22, 1907. The bid that was submitted on July 19,
318 1907 was opened on July 22, 1907, and I was present when it was opened on July 22, 1907. I had communicated with

Hoover & Gamble prior to going to Detroit, Michigan on July 22, 1907, and it was understood between the Hoover & Gamble Company and me at Miamisburg, Ohio, that the Ayton machinery was included in the bid. There was no understanding between me and Allen Armstrong that the Ayton machinery was included in the bid which was opened July 22, 1907.

MILTON DAILY, the petitioner, on re-direct examination by Mr. William S. Forrest, testified as follows:

The binder twine plant installed in the prison at Jackson, Michigan would fill I should think fourteen or fifteen ordinary closed freight cars. The largest pieces of machinery in that plant weigh about 9000 pounds each. The largest pieces of machinery in that plant were thirteen or fourteen feet long, five or six feet wide, and two and a half, or three, or four, or five feet in height. A bale of sisal is about four and a half feet long, two feet wide and three feet high. There was very little space within which to store that machinery at Jackson, Michigan on November 14, 1907. It was stored at that time in the sisal warehouse, that warehouse was built for the store of sisal. In that warehouse at that time besides the sisal they had received some carloads of machinery, I don't

319 remember how many, and when they were beginning to come in was the time that Mr. Armstrong asked me to come over there and take a look at them. About three quarters of the sisal warehouse at that time was full. At that time there probably could have been put in that warehouse another 500 bales piled up. The sisal then in the warehouse was piled up to the ceiling; they were piling it up just as high as they could the day I was there. At that time there was 1000 bales of sisal on the way that had been started and which I caused to be stayed and stored at Mobile, Alabama. Those 1000 bales of sisal were stored at Mobile, Alabama until the latter part of January, 1908, and the storage was paid for by the sisal company which I represented. The machinery building at the Jackson, Michigan prison plant was two or three hundred feet from the warehouse where the machinery and the sisal were stored. It was almost a block from the warehouse to the building where they expected to install and did install the machinery. When I arrived at Jackson, Michigan on November 14, 1907 Allen N. Armstrong wanted me to stop the shipments of both sisal and machinery until they could get the building ready so that they would not have to handle the machinery a second time. I stopped the shipment of both

320 the machinery and sisal. There might have been some machines loaded and on the way that came in afterwards that I didn't stop because I couldn't stop them. I don't know when the building was finished in which the machinery was installed. The plant was put into operation in March, 1908. I presume the machinery building was finished in February, 1908, all the machines must have been gotten in to the machinery building of course, before the machinery was put into operation.

MILTON DAILY, the petitioner, on Re-Cross examination by Mr. Thomas Barkworth, testified as follows:

The bid dated July 19, 1907 was signed by me, possibly not as agent; it should have been signed by me as agent, but it was not. The Hoover & Gamble Company did not on July 22, 1907 have in another bid. The Hoover & Gamble Company had no bid in except the bid which went in through me. I don't remember putting in a bid for the Hoover & Gamble Company prior to that time. I was not at Detroit, Michigan on July 22, 1907 with a bid which I intended should be accepted rather than any other bid that the Hoover & Gamble Company might have in. The only bid put in by me at that time was put in upon the request of the Hoover & Gamble Company; I expected to have that bid accepted. If we got the contract

321 I expected to get the contract on the bid submitted in writing on July 19, 1907. I had been to Miamisburg, Ohio on July 21, 1907, the day before I went to Detroit, Michigan on July 22, 1907. I met Mr. Gamble and Mr. Eminger at Miamisburg, Ohio on July 21, 1907, and I told them what Allen N. Armstrong had said to me about the Ayton machinery, and I said to Mr. Gamble and Mr. Eminger, "We have got that on our hands, or I have. I have passed an opportunity to sell it over at Sioux City, and they said they would take it if we would throw off \$3000.", and Mr. Gamble said, "You will do nothing of the kind. We built it and we cannot build any better. You send it to us and we will send it along with ours, and anything that is necessary to make it just the same as ours we will do."

Mr. THOMAS BARKWORTH:

Q. At some time or other Mr. Daily, Mr. Allen Armstrong knew of the substitution of that machinery, did he not?

A. Not from me.

Q. I asked you whether or not Mr. Allen Armstrong knew of the substitution of that Ayton, Canada machinery some time or other during the completion of that contract?

A. I don't know that he ever knew it.

WITNESS: I was not in Michigan on May 13, 1908. I did not send my son to Michigan on May 13, 1908.

Mr. THOMAS BARKWORTH:

Q. Did you know of your son going to Jackson, Michigan on May 13, 1908?

322 Mr. WILLIAM S. FORREST: I object to that question as not cross examination.

Mr. THOMAS BARKWORTH: If Your Honor please, if Mr. Daily knew that his son was going to Jackson, Michigan on May 13, 1908, that he knew why his son was going to Michigan on May 13, 1908, that might involve Mr. Daily's knowledge and Mr. Allen Armstrong's knowledge about the substitution of the machinery.

The COURT: Ultimately you have got to get down somewhere where there is some evidence introduced that this man did something in Michigan.

Mr. THOMAS BARKWORTH: I understand that to be Your Honor's ruling, that he must have done something in Michigan. We have already got him in Michigan making a contract, which he himself admits was a contract intended to be fraudulently and deceitfully carried out by himself and his associates.

Mr. WILLIAM S. FORREST: I insist that he makes no such admission as that.

Mr. THOMAS BARKWORTH: If Your Honor please, the evidence shows that Milton Daily, the petitioner, was in Jackson, Michigan in November, 1907 locating the machinery. The evidence also shows that he was at Jackson, Michigan settling for it with the Board of Control in April, 1908. Now, I insist, that anything that I can introduce which colors the purpose of the witness, Daily, in making those trips to Michigan, and in doing what he did do in Michigan, is proper proof in this case.

The COURT: There is no question about that. The question is, whether this is cross examination?

Mr. THOMAS BARKWORTH: I submit that it is proper cross examination. I think that if at any time during that proceeding the witness, Daily says that he knew of Mr. Armstrong's knowledge of the substitution, that that would be a sufficient admission on its face to color the purpose of the entire doings of this witness, Daily in Michigan on those occasions.

The COURT: On the ground that it is not cross examination the objection will be sustained.

To which ruling of The Court in sustaining said objection the counsel for the respondent then and there duly excepted.

Whereupon the petitioner, Milton Daily, rested.

324 Whereupon the respondent to maintain the issues on his part introduced the following evidence; that is to say:

ALLEN N. ARMSTRONG, being duly sworn, was examined in chief by Mr. Thomas Barkworth, and testified for the respondent as follows:

I reside in the City of South Bend, Indiana. My former residence was Jackson, Michigan. I was appointed Warden of the Michigan State Prison in February 1906, and served as Warden until February, 1909.

I am acquainted with Milton Daily, first became acquainted with him in the fore part of the year 1907 while I was Warden of the Michigan State Prison. Our acquaintance began through the installation of a binder twine plant in the Michigan State Prison. I am not quite sure whether I met him in the city of Chicago, or in Jackson, Michigan for the first time. I met him in both places at times, I don't remember which was the first. I met him three or four times between the time that I first got acquainted with him and the 22nd of July, 1907. I had a conversation with Mr. Daily prior to the 22nd day of July, 1907. It was in Chicago, in the State of Illinois. I won't be sure whether it was in his office or on the street. It was a few days—within ten days prior to the 22nd of

July, 1907, as near as I can remember. I won't be quite
325 positive in regard to the matter, but as near as I can remember, it was in substance that the Board of Control was making a mistake not to accept of his proposition to put in the machinery already installed in Canada, that it was just as good as new machinery, as Mr. Wolfer had informed the Board of Control, and he thought it could be arranged to be put in, and there would be a nice present in it for me. I notified Mr. Daily that the Board of Control had decided not to accept the Ayton machinery, that is the machinery that was installed in Ayton, Canada. I think it was about the same time, though possibly it might have been the same day. I saw Mr. Daily on more than one occasion about that time. I went to Kansas City, and stopped in Chicago both ways, and saw Mr. Daily each time. I could not say whether I received Mr. Daily's bid after I had informed him that the Board of Control refused to accept the Ayton machinery, or whether he brought it to Detroit, Michigan with him, or whether it came to Mr. Wrentmore.

When Mr. Daily said to me there would be a nice present in it for me, I think I asked him what the amount was, or how much, and I think he said "One thousand dollars any way." I think I was on the street, I won't be sure about that, but it was here in the city somewhere. In substance that is the conversation; of course, there must have been talk before and afterwards.

326 We talked about the hiring of a superintendent on my trip over, and my trip back was the result of my trip to Kansas City in which I did hire a superintendent.

I was present at the meeting of the Board of Control in Detroit, Michigan prior to July 22, 1907. There were two bids presented. There might have been three, but only two parties, as I remember it. One of them was made, if not two, by Mr. Daily; one in behalf of the Hoover & Gamble Company, Miamisburg, Ohio; the other by some people east, in New Jersey, by the name of The Watson Manufacturing Company. I think they were in writing. One bid included all the machinery located in Canada, and I think the other bid excluded that. I subsequently had a conversation with Daily about these two bids in the City of Chicago, Illinois. I informed Mr. Daily, acting on the instructions of the Board of Control, that they had decided not to accept the bid which included the machinery in Canada for the reason that in the sale of twine the International people might use that as a leverage against the prison made twine, that they had installed old machinery, hence could not make good twine, and I asked Mr. Daily to make a bid not including that machinery, and that the next meeting of the Board of Control would be on the 22nd of July. Mr. Daily said we were making a mistake and the other machinery was just as good.

327 I saw Mr. Daily in Michigan on the 22nd of July, 1907. My recollection is, he was present at the meeting of the Board of Control at which the bids were considered. I don't remember about the modification of the bids. I don't recollect meet-

ing Mr. Daily on that day in Detroit, Michigan before the meeting, but I have a recollection of having some correspondence with him about where the meeting was to be held, and a faint recollection that I was to meet him somewhere to show him where Mr. Navin's office was, but as to meeting him, as was stated by Mr. Daily yesterday, at the Wayne Hotel and going up with him, I don't recall that. I don't think I saw him again until the middle of the fall, in the month of November, 1907, at which time I had a conversation with him. I won't be positive, I can't remember whether that conversation was in Jackson, Michigan, or whether it was over the 'phone, or whether in the City of Chicago, Illinois. That conversation was about a conversation which Daily had with the secretary of the Hoover & Gamble Company. To the best of my recollection, it was in Jackson, Michigan. Daily stated when the Hoover & Gamble Company received the contract that the secretary, Mr. Eminger, had objected to the word "New" referring to the machinery, and was afraid that they would have trouble with the consulting engineer in regard to the matter, and I told

328 Daily that I did not think they would have any trouble with him. I think I must have talked with Mr. Daily at that time about we were having trouble getting the building completed for the plant. I know I had some correspondence with Mr. Daily in regard to holding up the machinery, and also holding up shipments of sisal. I do not remember talking with him at that time, but I would not want to say that I did not.

I next saw Mr. Daily the following spring after the machinery was installed and had been started. I think it was about the fore part of April. I don't know what was the occasion of Mr. Daily's coming. I had no talk with him about the machinery. There were present: Mr. Daily, Mr. Eminger, and I think there was a third party with him, but will not be sure—were sitting in the waiting room of the prison. To the best of my recollection, the Board of Pardons was in session in my office, and the secretary notified me that Mr. Daily was out there, and I went out and Mr. Daily simply introduced me to Mr. Eminger, and I think that I passed them through the prison. I did not go into the plant with them. I had no conversation with them in regard to the machinery. Aside from the records of the meeting I would not want to say whether Governor Warner or Mr. Merriman were there that day or not. I did not see Mr. Daily at any other

329 time in Michigan subsequent to the 22nd day of July, 1907 other than the two occasions I have stated.

MR. BARKWORTH: I think that is all. You can take the witness.

The COURT:

Q. Did you ever have any talk with Daily in the State of Michigan about this present of a thousand dollars?

A. No sir, not to the best of my recollection. I have no recollection of ever having any talk with him there on that subject.

Q. Did you ever have any conversation with Daily in the State

of Michigan at all respecting anything in the way of an irregularity in connection with the installation of this machinery?

A. Not unless that conversation that we had in regard to the talk that he had with Mr. Eminger was in Jackson in regard to the wording of the contract, the word "new" that Mr. Eminger had objected to it, and the best of my recollection is that that was in Jackson, yet I would not be positive in regard to that matter, Your Honor.

The COURT: Have you any further testimony?

Mr. BARKWORTH: No, Your Honor. We have no further testimony.

The COURT: Sir?

Mr. BARKWORTH: No, Your Honor.

The COURT: Before you, Mr. Forrest, cross examine this
330 witness I would like to have an expression from counsel for the State of Michigan as to what this testimony—the testimony of this witness establishes on the issue The Court is now hearing, namely: that Daily is a fugitive from the State of Michigan?

Mr. BARKWORTH: If Your Honor please, it establishes the fact that Mr. Daily was in Michigan carrying out the conspiracy and taking steps in furtherance of the conspiracy which had been conceived, and so far as the conspiracy is concerned, consummated prior to that time. That he was there in Michigan carrying out the ingredients of the offense both of bribery and false pretenses which are set up in the indictments under which this petitioner is charged.

The COURT: Well, I have disposed of the false pretense phase of this matter.

Mr. BARKWORTH: Yes.

The COURT: And it is not now before this court for consideration.

Mr. BARKWORTH: Very well, Your Honor.

The COURT: On the theory—I do not know but that there may be some misunderstanding.

Mr. BARKWORTH: No, Your Honor.

The COURT: I don't know whether you were here when the question was disposed of or not.

331 Mr. BARKWORTH: Pardon me, if Your Honor please, but I know what Your Honor said.

The COURT: Very well.

Mr. BARKWORTH: I had a stenographic report of Your Honor's remarks, but I did not know but what Your Honor's view with respect to that matter might have been changed by the testimony of Mr. Daily himself, if Your Honor please, with regard to that, but I don't care to argue the matter when Your Honor's mind is made up.

The COURT: I disposed of that matter on the theory that there could not be a violation of that statute, the false pretense statute, for a criminal case to be prosecuted by the respondent here, saying that somebody was defrauded by the false pretenses. Here is all of this machinery. You and your expert are here now on the

ground; look it over; it is all new. On the theory that if it was old and worn the victim and his expert mechanics would discover it the first time, and in a criminal prosecution that phase would exclude the idea of the crime.

Mr. BARKWORTH: I understood that to be the point upon which Your Honor determined the case, and Your Honor put the contract in there with its terms.

The COURT: Yes.

Mr. BARKWORTH: And said that it was up to the State of Michigan and its experts to pass their judgment upon it, and that
332 it would not be criminal. I call Your Honor's attention to the fact that Mr. Daily himself testifies, that conspiring with Mr. Eminger—this was his own testimony—he went to the city of Detroit, putting in a bid for new machinery, having in mind a substitution of machinery, which he says himself no man could tell from new. That was his testimony yesterday, if the court please. Now, at the time that this conspiracy was carried out, so far as the acceptance of the bid—

The COURT: When I dealt with this question I dealt with your charge that it was old and worn.

Mr. BARKWORTH: Yes, Your Honor.

The COURT: Your proposition is that Daily did not tell the truth yesterday?

Mr. BARKWORTH: No, your honor. Well, I am not prepared to say—

The COURT: Well, it must necessarily be, because every thing up to date before this court on this subject has been that old and worn machinery was substituted.

Mr. BARKWORTH: If the court please, we say that old and worn machinery was substituted, without any sort of question.

The COURT: Well, then, pass on to the other phase of this inquiry, because in the judgment of the court the court may be wrong. He
has been wrong before, and he reserves the right to be wrong
333 again, honestly. But in the judgment of the court the false pretenses of this phase of this controversy will have to be resolved by the court against extradition.

Mr. BARKWORTH: Very well, Your Honor. Now, with regard to the other matter, I simply say, if your honor please, that the conspiracy which was concocted in the city of Chicago was being aided and furthered by Mr. Daily, in accordance with the testimony of Mr. Armstrong, by his visit to Michigan in November. It puts it squarely before the court, the furtherance of the conspiracy by Mr. Daily in November being a criminal act against the laws of the State of Michigan, and therefore his absence from the State, when required to answer for that, constitutes him a fugitive from justice. Now, that is my idea, your honor. I do not care—

The COURT: Have you in mind the element that in dealing with this question that you now have suggested, have you in mind any other crime than that of bribery?

Mr. BARKWORTH: I do not have in mind any other crime than

bribery, under the ruling of your honor that I need not spend any time on false pretenses.

The COURT: Well, you talk about conspiracy.

Mr. BARKWORTH: Bribery includes the meeting of two minds, if your honor please.

The COURT: Yes, I understand.

334 Mr. BARKWORTH: That is what I alluded to in that, if your honor please, nothing more.

The COURT: Very well.

Which was all the evidence offered or received at the hearing of the above entitled cause.

Thereupon counsel for the respondent, and counsel for the petitioner addressed The Court.

Whereupon The Court, Honorable Kenesaw M. Landis, Presiding, delivered the following opinion:

Decision.

The COURT: In this matter the issue for the consideration and determination of the court is the question whether or not the petitioner, Milton Daily, is a fugitive from the justice of the State of Michigan, not whether the petitioner Daily is guilty as charged in the indictment, nor whether showing is made, as it would have to be made on the trial of a criminal case before a jury, where the rules of criminal law apply, whether any crime has been committed. It is a well established rule, binding on this court, as laid down by the Supreme Court of the United States, in force in Illinois,

335 in force here in this court room now, that the person charged with being a fugitive from the justice of the state must have been physically present in the state when the thing charged was done.

So that the question for me to consider here in determining the prayer of this petitioner, is whether or not it now appears here that when the thing was done Daily was present in the State of Michigan. And that leads The Court to a consideration of the question, what is the thing, and that is the dispute between the counsel for the petitioner and the counsel for the State of Michigan.

In behalf of the petitioner the contention has been made that under this statute, which in substance is an enactment imposing a penalty for the giving of money to a public officer with intent thereby to influence his disposition of a matter pending before him as such officer, that a violation of that statute consists in the payment of the money; that all that precedes the actual payment of the money merges into the act called bribery by this statute, and, for the purposes of such a question as is presented here, that all that preceded it is wiped out.

It is the position of the State of Michigan by the counsel appearing here representing the respondent, Strassheim, Sheriff of Cook County, that if the petitioner is legally charged with bribery

336 in the State of Michigan, and it is charged that he there did a thing which constitutes an ingredient of the crime of

bribery, that then, for the purposes of this question the petitioner was in the State of Michigan when the crime of bribery was committed, it being the position of the State of Michigan that the crime of bribery on this issue is to be regarded as something broader than the mere payment by one man to a public officer of a sum of money with corrupt intent.

There are some matters of fact that are established beyond controversy now in this proceeding; that the petitioner Daily was not in the State of Michigan when the act of payment was made; that the petitioner Daily was not in the State of Michigan when the words were used between Daily and Armstrong, the warden of the prison, referred to in the argument as the preliminary offer or promise or suggestion by Daily to Armstrong that Daily would pay Armstrong money in consideration of Armstrong, as warden, allowing the things to be done, which may be generalized as the putting in of the old machinery for new. The evidence is, as I said a moment ago, that Daily was absent from Michigan when these two things happened, so that if extradition is warranted here it is on the theory that at other times Daily was in Michigan when things were done that in substance amount to the committing of acts essentially
 337 constituting at least parts of the crime of bribery, elements of the crime of bribery.

It appears that some time in the summer of 1907, the legislature of Michigan having passed an act authorizing the installation of a binder twine plant at the Michigan State prison at Jackson, the Board of Control of the State of Michigan having in charge State's prison affairs, undertook, in the exercise of the authority devolved upon that Board by the statute, the installation of such a plant at the prison; that such steps were taken as resulted in the submission of bids for the furnishing, by the bidders to the State of Michigan for that purpose, of the machinery for this plant; that those bids were not accepted, that no one of them was accepted, and during the succeeding time Daily was in Chicago, Armstrong was in Chicago, he being the warden of the prison and under the statute having to do with the question which the Board of Control was then considering, namely, the awarding of the contract for the installation of this machinery. Being in Chicago Armstrong and Daily either got together or found themselves together somewhere and the subject of the installation of the bindery twine machinery at Jackson came up between them. That Daily, either referring to, or after a reference to, the subject of furnishing the old machinery, or the Canadian
 338 machinery, stated to Armstrong in substance that there would be a nice present in it for Armstrong if the thing was done, or substantially to that effect. That is what it means to me on this occasion for the purpose of determining this question. What a jury might say it meant is not for the court here now to consider. That a few days after that meeting in Chicago Armstrong and the Board of Control were in session in the City of Detroit for the purpose, among other things at least, of receiving bids for the furnishing of this machinery at the Jackson prison. That on that occasion Daily appeared in the city of Detroit and submitted a bid. That that bid

specified new machinery. That bid was accepted by the Board of Control, Armstrong being present at the time Daily submitted his bid. There is some evidence as to a change in the bid or in the contract different from the original bid that had been submitted by Daily. But in the view the court takes of this question that is not material, or at least, important. The bid submitted by Daily was accepted. Daily left town. This was in July, 1907. I say the bid was accepted. Daily left town and some time thereafter was formally notified of the acceptance of his bid, or his company was, in the month of August, 1907.

Time went on, and in November, 1907 Daily is in Jackson. There is talk in Jackson at that time between Daily and Armstrong respecting the subject matter of the contract, created by the
339 acceptance by the Board of Control of the bid which Daily had submitted to that Board on the 22nd of the preceding July. Other things are talked about and Daily leaves town. The other things, the testimony shows, were the embarrassments which the State was suffering by reason of the machinery and other material coming into Jackson ahead of time, or at least before the State was prepared to care for it.

Time goes on and the winter passes by, and in the month of April following Daily again is in Jackson and sees Armstrong in connection with and about the installation of this machinery which Daily's firm is furnishing in purported compliance with the obligation it assumed when it entered into the contract in the preceding July. Daily's presence in Michigan at that time was for no other purpose. No money was paid on that occasion and Daily left Jackson. A matter of five or six weeks thereafter the money was paid—the record shows that that happened—paid by Daily to Armstrong, Daily's purpose being to compensate Armstrong for what Armstrong had done in respect to the installation of this machinery. But, as suggested at the beginning, not when Daily was in the State of Michigan. The view I take of the effect of the visits of Daily to Michigan on the 22nd of July, 1907, in the month of November, 1907 and in the month of April, 1908 is this: In the month of July he went there in execution of the program, assuming one to have
been entered into between Armstrong and Daily, in execution
340 of the program in respect of which, when carried out, Armstrong was to be paid the money. When he went to Jackson in November it was in further execution of the program provided for in the arrangement for the payment of this money, and when he went to Jackson in April, 1908 it was in further execution of the program provided for in the understanding for the payment of the money.

As a legal proposition I find nothing in that testimony upon which the court can base the finding that anything was done by Daily in the State of Michigan which the court can conclude or presume, as a matter of law, was an essential ingredient of the crime of bribery, it clearly appearing, as it does in the evidence, that the crime was committed, and that the machinery was put in, in accordance with an arrangement for the commission of the crime.

I am not in harmony with the contention of your adversary, counsel for the petitioner, that under the doctrine of merger of offer or promise with the completed, ultimate act of payment, if the evidence showed the presence in Michigan of Daily at the time he offered the money or at the time he did anything else save only to carry out the thing which the contract to pay the money was made for, that that

341 would not be evidence of the presence of Daily in the State of Michigan at the time when the crime was committed. I am of the opinion that it would be evidence of Daily's presence in the State of Michigan when the crime was committed, but there is no evidence here.

How much time do you (addressing Mr. Thomas Barkworth, counsel for respondent) want to prepare for your appeal? If you desire to take a few days to consider it, Mr. Barnett may come in on a later occasion.

MR. BARKWORTH: I don't think it will be necessary, if The Court please. Sixty days. We can perfect our appeal within sixty days, and we ask, under Rule 34, that the petitioner be required to give a bond.

Be it further remembered that on to-wit: the 20th day of July, A. D. 1909, the same being one of the days of the July Term, A. D. 1909, of said United States District Court, said District Court, the Honorable Kenesaw M. Landis, Judge, presiding, over-ruled the demurrer of the respondent to the answer of Milton Daily, the petitioner, to the return of the respondent to the Writ of Habeas Corpus in this case, and in over-ruling said demurrer held among other things that the matters and facts and things alleged in the indictment for obtaining Ten Thousand Dollars in money from the State of Michigan and the people thereof by false pretences, which indictment accompanied the requisition in this case, of and from

342 the Governor of the State of Michigan, do not constitute a crime against the laws of the State of Michigan, and that Milton Daily, the petitioner, does not stand charged, by virtue of such indictment, with the commission of any crime against the laws of said State of Michigan.

Forasmuch as the said evidence and said several proceedings and matters of exception do not appear of record in said cause, this Bill of Exceptions is presented to The Court by the respondent, Christopher Strassheim, with the prayer that the same may be signed and sealed by The Court here, which is done accordingly this one day of March, A. D. 1910.

KENESAW M. LANDIS,
Judge of said United States District Court.

343 Endorsed: Filed March 1, 1910, at — o'clock — M. T. C. MacMillan, Clerk.

344

March 10, 1910.

In the United States District Court, Northern District of Illinois

No. 10309.

MILTON DAILY

vs.

CHRISTOPHER STRASSHEIM.

Writ of Habeas Corpus.

Order for Record.

Hon. Thomas C. McMillan, Clerk of the District Court of United States, Chicago, Illinois.

DEAR SIR: Please prepare record in the above entitled cause, for presentation to the Supreme Court of United States on appeal, so that said record shall show the following indicated orders and documents to-wit:

June 23, 1909.	Filing petition and petition.
" " "	Issuing writ and writ.
" " "	Christopher Strassheim, Sheriff.
" 24, "	Admitting petitioner to bail and bond.
" " "	Filing stipulation and stipulation.
" 26, "	Filing demurrer ore tenus.
July 20, "	Entering demurrer of respondent and order overruling the same.
" " "	Entering motion for Respondent for leave to file affidavit and motion.
Oct. 4, "	Entering motion to set for hearing the question of admissibility of affidavit and motion.
" 16, "	Leave to petitioner to file amended answer to return of Respondent and amended answer filed, and amended answer.
" " "	Cause set for hearing October 25.
" 25&26, "	Cause heard on these two days by U. S. Dist. Court.
Nov. 10, 1909.	Leave to respondent to file waiver of date, and present testimony in support of return, nunc pro tunc as of October 25, 1909, and waiver so filed.
" " "	Order discharging Relator.
" " "	Order allowing appeal. Filing assignment of Error. Prayer for appeal and bond.
Dec. 8, "	Order requiring petitioner to give bond pending disposition of appeal. Diving said bond and the bonds. Time to file bill of exceptions and record extended to January 10, 1910.
Jan. 6, "	Time extended to file bill of exceptions Jan. 25, 1910.

" 24, " Order extending the time to file bill of exceptions
and record to March 1, 1910.
Mar. 1, " Filing of appeal bond.
" " " Filing the bill of exceptions.

Very respectfully,

J. E. W. WAYMAN,
State's Att'y of Cook County.
F. L. BARNETT.

345 In the District Court of the United States for the Northern
District of Illinois, Eastern Division.

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record in Case No. 10309—Application of Milton Daily for a Writ of Habeas Corpus, prepared in accordance with Præcipe filed herein, as same appears from the records and files in said cause now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office at Chicago, in said District, this — day of May, A. D. 1910.

[Seal of Dist. Court U. S., Northern Dist. Illinois.]

T. C. MACMILLAN, *Clerk.*

Endorsed on cover: File No. 22,259. N. Illinois D. C. U. S. Term No. 638. Christopher Strassheim, sheriff of Cook County, Illinois, appellant, vs. Milton Daily. Filed July 14th, 1910. File No. 22,259.



Office Supreme Court, U. S.
FILED.

FEB 14 1911

JAMES H. McKENNEY,

CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1910.

No. 638.

CHRISTOPHER STRASSHEIM, SHERIFF OF COOK
COUNTY, ILLINOIS, APPELLANT,

vs.

MILTON DAILY.

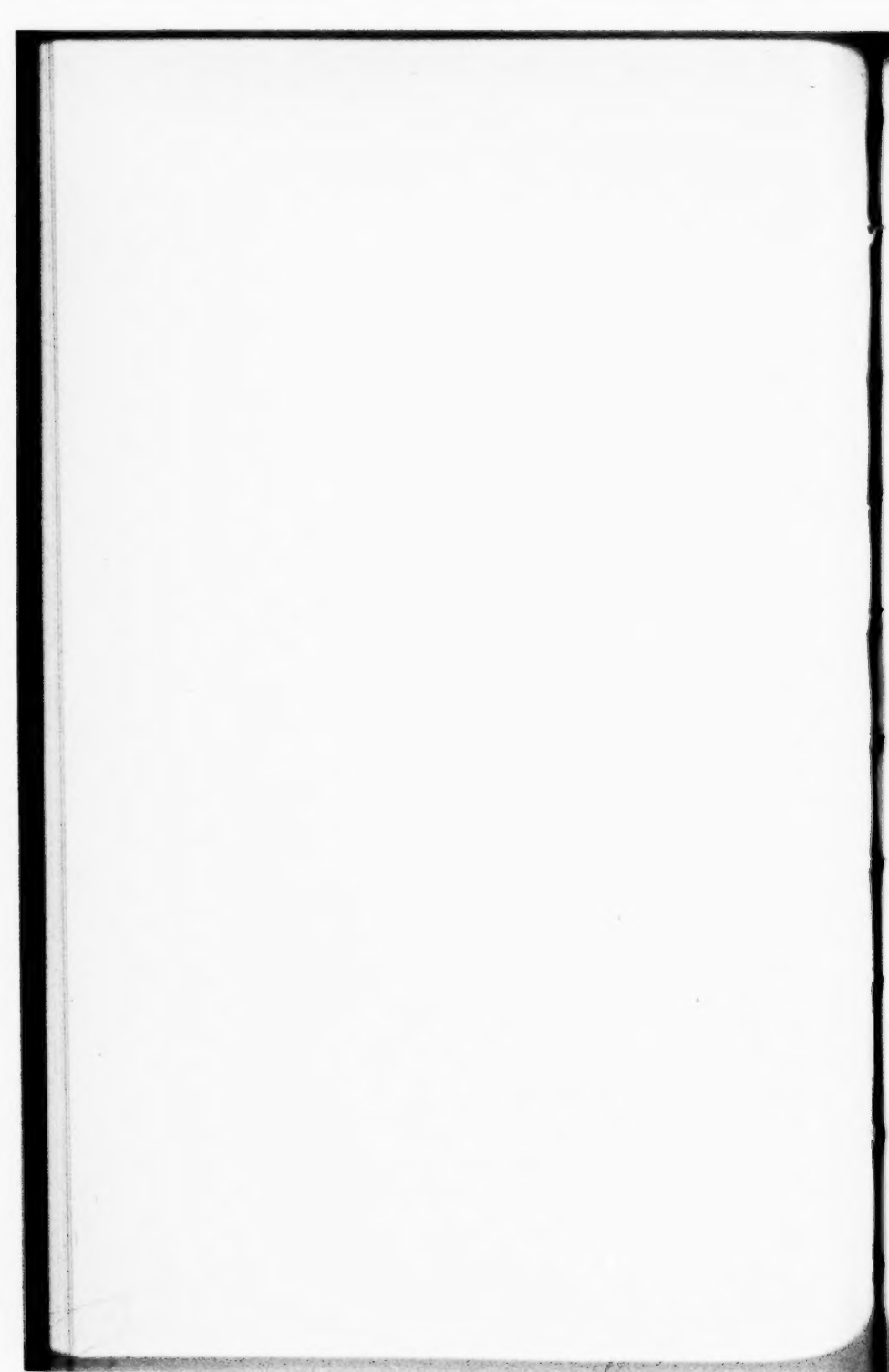
Motion to Amend Record, by Filing Instanter, Certified
Copy of Appellant's Answer.

FRANZ C. KUHN,

ATTORNEY-GENERAL, OF MICHIGAN, LANSING, MICH.,

ATTORNEY FOR APPELLANT.

BARNARD & MILLER PRINT, CHICAGO.



IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1910.

No. 638.

CHRISTOPHER STRASSHEIM, SHERIFF
OF COOK COUNTY, ILLINOIS,

Appellant,

v.s.

MILTON DAILY,

Appellee.

} Writ of
Habeas Corpus.

NOTICE OF MOTION.

*To William S. Forrest,
Ashland Block,
Chicago, Illinois.*

SIR: Please take notice, that on Monday, the 20th day of February, A. D. 1911, or as soon thereafter as counsel may be heard, I will move that the record in the above entitled cause now on file in said court be amended so as to include the answer of Christopher Strassheim, sheriff of Cook County, appellant, as the same is of record in the office of the clerk of the District Court of the United States, for the Northern District of Illinois, by filing a duly certified copy of said answer instanter.

You are herewith served with a copy of said motion, affidavit in support thereof, and a copy of the answer of Christopher Strassheim, sheriff, herein referred to.

Dated this 10th day of February, A. D. 1911.

FRANZ C. KUHN,
*Attorney General of the State
of Michigan, Attorney for
Appellant.*

F. L. BARNETT,
Of Counsel for Appellant.

STATE OF ILLINOIS. }
COUNTY OF COOK. } ss.

F. L. Barnett, of counsel for Christopher Strassheim, first being duly sworn according to law, deposes and says that he has caused a copy of the foregoing motion, notice of motion, affidavit in support of motion and copy of return of Christopher Strassheim, sheriff, to be served upon William S. Forrest, attorney for appellee, by delivering the same at the office of the said William S. Forrest on this, the 10th day of February, 1911.

F. L. BARNETT.

Subscribed and sworn to before me this 11th day
of February, A. D. 1911 *Joseph McMullan*
T. C. McMILLAN,
Deputy Clerk of the District Court.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 638.

Christopher Strassheim, Sheriff of Cook County,
Illinois, Appellant,

vs.

Milton Daily, Appellee.

MOTION BY APPELLANT TO AMEND RECORD
IN THE ABOVE ENTITLED CAUSE.

And now comes the said appellant, by Franz C. Kuhn, attorney general of the State of Michigan, and suggests to the court a diminution of the record in the above entitled cause, and moves for leave of court to file instanter a certified copy of the return of Christopher Strassheim, sheriff, as the same appears of record in the District Court of the United States, for the Northern District of Illinois, and that the record in the above entitled cause be amended so as to include said certified copy here and now presented.

FRANZ C. KUHN,
*Attorney General of the State
of Michigan, Attorney for
Appellant.*

F. L. BARNETT,
Of Counsel for Appellant.

IN THE
SUPREME COURT OF UNITED STATES,
OCTOBER TERM 1910.

Christopher Strassheim, Sheriff of Cook County, Illinois, <div style="text-align: right;"><i>Appellant,</i></div>	}	<i>Habeas Corpus</i> No. 638. <i>Appeal from U.</i> <i>S. District</i> <i>Court, Northern</i> <i>District, Illinois.</i>
<i>vs.</i>		
Milton Daily, <div style="text-align: right;"><i>Appellee.</i></div>	}	

SUGGESTION OF DIMINUTION OF RECORD
AND MOTION FOR LEAVE TO FILE AD-
DITIONAL RECORD INSTANTER.

AFFIDAVIT IN SUPPORT OF MOTION.

And now comes F. L. Barnett of the City of Chicago and County of Cook, Illinois, of counsel for appellant in the above entitled cause, who, first being duly sworn, according to law, deposes and says that he acted as one of counsel for Christopher Strassheim, appellant, on the hearing of the above *habeas corpus* cause in the District Court, and that after the entry of judgment and allowance of appeal, this affiant prepared the order for the praecipe filed on behalf of appellant ordering the record in the above entitled cause.

This affiant further says that after the praecipe in said cause had been prepared it was submitted by this affiant to William S. Forrest, Esq., attorney for

appellee, and that said praecipe was approved by said counsel, and was thereafter filed in the office of the clerk of the District Court for the preparation of the record from the orders therein specified.

This affiant further says, from information furnished to this affiant over the signature of James H. McKenney, clerk of the Supreme Court of the United States, and this affiant believes the facts to be that the said praecipe originally contained an order following, to wit:

“Filing answer of Christopher Strassheim, Sheriff, and answer”;

but that after said praecipe had been so written, certain words of said order were stricken out by a line drawn through them, so that the original order was made to read:

~~“Filing answer of Christopher Strassheim, Sheriff, and answer.”~~

This affiant further says that he does not know when or by whom said words were stricken out, but this affiant does know, and so states the fact to be, that the striking out of said words was a clerical error and said order was not intended by appellant to be so changed or said words to be stricken out, and that the intention of said appellant by said order was to submit to this Honorable Court the answer or return of Christopher Strassheim, sheriff, as a part of the record in said cause.

This affiant further says that by the misprision of error above set forth, the record prepared by the clerk of the United States District Court in the above entitled cause and filed in this court, is not complete in that it does not show the answer of Christopher

Strassheim, sheriff, and the cause on the part of appellant cannot properly be presented to this court without adding to said record so on file in this court a certified copy of the return of said Christopher Strassheim, and including the same in the record filed in this court.

Wherefore, this affiant suggests a diminution of the record in the above entitled cause and presenting herewith in support of the motion here and now made: a duly certified copy of the answer of the said Christopher Strassheim, sheriff, as the same was intended by appellant in his said praecipe to be included in the record, said certified copy being made by the clerk of the District Court of the United States for the Northern District of Illinois, prays that an order may be entered, allowing an amendment of the record now on file in the office of the clerk of the Supreme Court of the United States in the above entitled cause by adding instanter thereto and including therein the certain certified copy of the answer of Christopher Strassheim, sheriff, attached hereto and made a part hereof.

F. L. BARNETT.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

F. L. Barnett, first being duly sworn, according to law, deposes and says that he has read the foregoing affidavit by him subscribed and knows its contents, and that the matters and things therein stated as facts are true and that as to the matters and things therein stated to be upon belief and information, he believes them to be true.

F. L. BARNETT.

Subscribed and sworn to before me this 16th day
of February, 1911.

Joseph C. Sullivan
Deputy Clerk of the District Court of United
States, Northern District of Illinois.

STATE OF ILLINOIS, }
COUNTY OF COOK } ss.

*To the Hon. Kenesaw M. Landis, Judge of the Dis-
trict Court of the United States of America:*

I, Christopher Strassheim, sheriff of said County of Cook, to whom the annexed writ is directed, have now before the court the body of Milton Daily, therein named as thereby commanded, and for cause of his caption and detention I hereby certify and return that he is held in custody by me as such sheriff, under and by virtue of a certain Governor's Warrant, which was issued on the 21st day of May, A. D. 1909, by the Hon. Charles S. Deneen, Governor of the State of Illinois, directing me as such sheriff to arrest and secure the said Milton Daily and deliver him into the custody of Jacob F. Strobel, the agent of executive authority of the State of Michigan, as by reference to said Governor's warrant, a copy of which is hereto annexed, will more fully and completely appear.

CHRISTOPHER STRASSEHEIM.

Sheriff.

DISTRICT COURT OF THE UNITED STATES OF AMERICA, }
 NORTHERN DISTRICT OF ILLINOIS. } ss.
 Eastern Division.

THE UNITED STATES OF AMERICA.

*To Christopher Strassheim, Sheriff of Cook County
 in the State of Illinois:*

GREETING:

WE COMMAND YOU THAT YOU DO at fifteen minutes after two o'clock in the afternoon of this 23rd day of June in the year, 1909, without excuse or delay, bring or cause to be brought before the District Court of the United States of America, for the Northern District of Illinois, now sitting in the court room of said District Court, in the City of Chicago, in said District, the body of Milton Daily, by whatever name or addition he is known or called, and who is soon unlawfully detained in your custody, as it is said, together with the day and cause of his caption and detention then and there to perform and abide such order and direction as our said District Court shall make in that behalf. Hereof make due return under the penalty of what the law directs.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. Kenesaw M. Landis, Judge of the District Court of the United States of America, at Chicago, aforesaid, this 23rd day of June, in the year of our Lord one thousand nine hundred and nine and of our independence the 123rd year.

T. C. MAC MILLAN,
Clerk.

STATE OF ILLINOIS,
EXECUTIVE DEPARTMENT.

CHARLES S. DENEEN, Governor of Illinois.

*To any Sheriff, Coroner or Constable, of any county
in this state, greeting:*

The Executive Authority of the State of Michigan demands of me the apprehension and delivery of Milton Daily, represented to be — fugitive— from justice and has moreover, produced and laid before me the copy of an indictment made by and before a properly empowered officer in and of the said state in accordance with the laws thereof charging Milton Daily and warrants the person— so demanded, with having committed against the laws of the said State of Michigan the crime of bribery and obtaining ten thousand dollars in money by false pretenses which appears by the said copy of an indictment and warrants certified as authentic by the Governor of the said state now on file in the office of the Secretary of State of Illinois and being satisfied that said Milton Daily is a fugitive— from justice and has fled from the State of Michigan.

THEREFORE, in compliance with the constitution and the laws of the United States and of this state in the name of the *PEOPLE OF THE STATE OF ILLINOIS*, you are hereby commanded to arrest and secure the said fugitive Milton Daily if he be found within the limits of this state and deliver him into the custody of Jacob F. Strobel the agent of executive authority of the said State of Michigan appointed to receive the said fugitive.

PROVIDED, such agent shall appear within six months from the time of the ar-

rest, and the said agent is hereby empowered to transport the said fugitive, without hindrance or molestation of any sort or in any manner to the extreme limits of this state, in furtherance of his authority, he paying all costs and fees for the arrest, detention and delivery of the said fugitive. And you make due and formal return to this department. of the time and manner in [SEAL] which this writ may be served.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Great Seal of State. Done at the City of Springfield, this 21st day of May A. D. 1909 and of the Independence of the United States the 132rd.

BY THE GOVERNOR:

JAMES A. ROSE,
Secretary of State.
CHARLES S. DENEEN.

IN THE UNITED STATES DISTRICT COURT,
FOR THE NORTHERN DISTRICT OF ILLINOIS,
Eastern Division.

I, T. C. MacMillan, Clerk of the District Court of the United States of America, for the Northern District of Illinois, *DO HEREBY CERTIFY* the above and foregoing to be a true and correct copy of return to Writ of Habeas Corpus, *in re* Milton Daily *vs.* Christopher Strassheim, Sheriff, as same appears from the original filed in said court on the 5th day of January, A. D. 1909 and now remaining in my custody and control.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said [SEAL] District, this 10th day of February, A. D. 1911.

T. C. MAC MILLAN,
Clerk.

FILED.

FEB 20 1911

JAMES H. MCKENNEY,

CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1910.

No. 638.

CHRISTOPHER STRASSHEIM, Sheriff of Cook County,
Illinois,
Appellant,

vs.

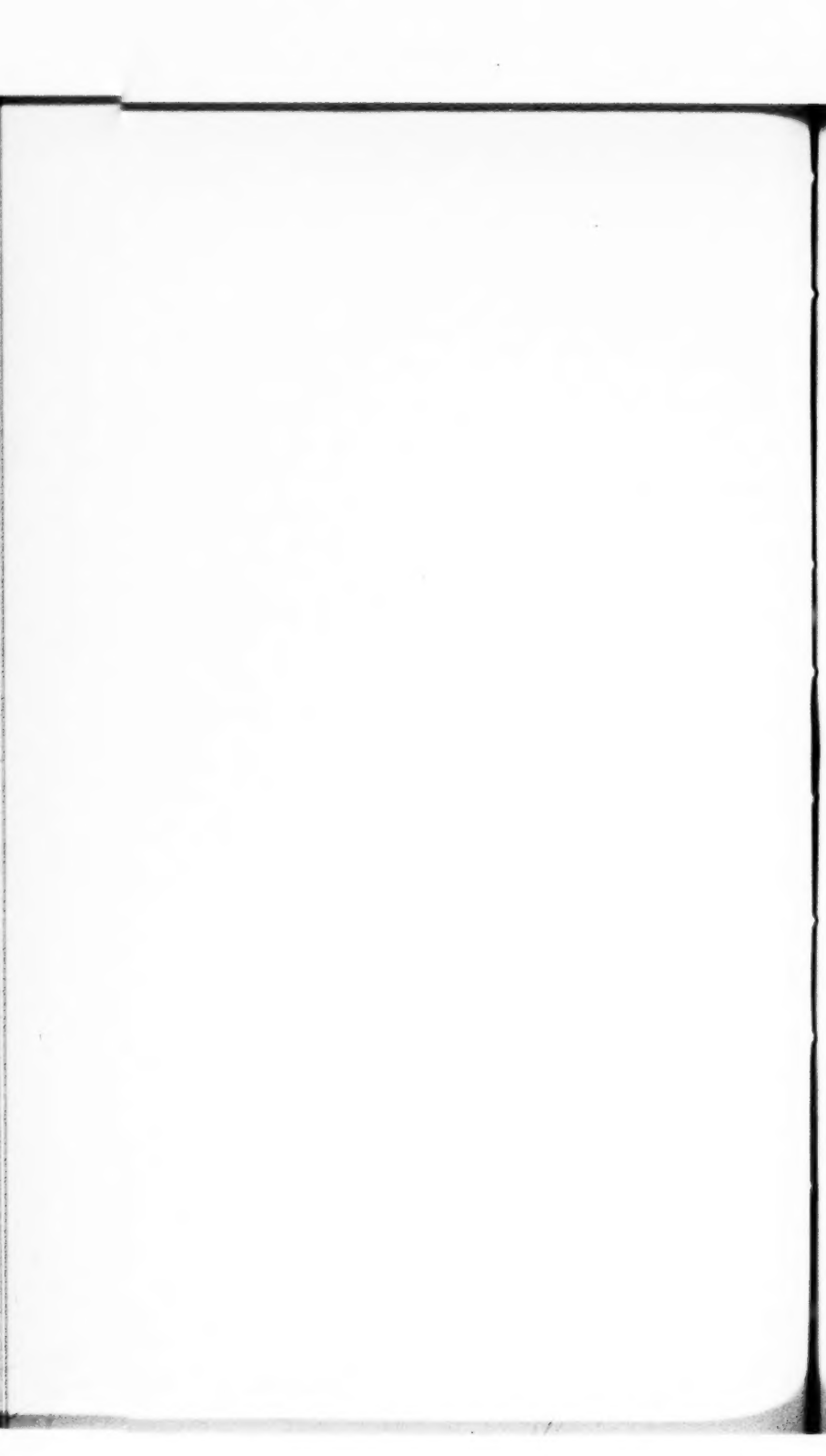
MILTON DAILY,
Appellee.

Appeal from the District Court of the United States for the
Northern District of Illinois, Eastern Division.

Objections by Appellee to the Granting of the Motion
to Amend the Record by Filing Instantly a
Certified Copy of the Return of Christopher
Strassheim, Sheriff. Suggestions in Support of
said Objections.

WILLIAM S. FORREST,

Counsel for Appellee.



IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1910.

No. 638.

CHRISTOPHER STRASSHEIM, Sheriff of Cook County,
Illinois,
Appellant,

vs.

MILTON DAILY,
Appellee.

Appeal from the District Court of the United States for the
Northern District of Illinois, Eastern Division.

Objections by Appellee to the Granting of the Motion
to Amend the Record by Filing Instanter a
Certified Copy of the Return of Christopher
Strassheim, Sheriff. Suggestions in Support of
said Objections.

Comes now the said Milton Daily, appellee, by his
counsel, William S. Forrest, and objects to the grant-
ing of the motion of appellant to amend the record
in the above entitled cause by filing instanter a certi-
fied copy of the return of Christopher Strassheim,
Sheriff, upon the following grounds:

1. The certificate of the Clerk of the United States
District Court to the certified copy of the return,

which counsel for appellant asks leave to file instant-ter is that the above and foregoing is "a true and correct copy of return to writ of *habeas corpus in re Milton Daily v. Christopher Strassheim, Sheriff*, as same appears from the original filed in said court on the fifth day of January, A. D. 1909, and now remaining in my custody and control."

The above entitled cause was not pending in said District Court on the fifth day of January, A. D. 1909. Said cause was commenced in said court by the filing of the petition of Milton Daily, appellee, on the 23rd day of June, A. D. 1909, and the return of Christopher Strassheim in said cause was filed in said District Court on the 23rd day of June, 1909. See Transcript of Record, p. 26, and the pages which follow.

It appears from the transcript of the record that the stipulation between Milton Daily and Christopher Strassheim, Sheriff, and their respective counsel, that the application and petition for the writ of *habeas corpus* shall for all purposes be taken as the answer of Milton Daily to the return in the above entitled cause, was filed in the District Court on June 24, 1909. It is clear, therefore, that the return of Christopher Strassheim, Sheriff, in the above entitled cause is a return which was filed in the District Court on June 23 or June 24, 1909, and not on the fifth day of January, 1909.

This objection is based upon the papers served upon counsel for appellee in connection with a notice of the foregoing motion. Attached to said papers is what purports to be a certificate of the Clerk of the

District Court, which certificate is of the tenor following:

“IN THE UNITED STATES DISTRICT COURT,
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

I, T. C. MacMILLAN, Clerk of the DISTRICT COURT of the UNITED STATES OF AMERICA, for the Northern District of Illinois, Do HEREBY CERTIFY the above and foregoing to be a true and correct copy of return to writ of *habeas corpus*, in *re Milton Daily v. Christopher Strassheim, Sheriff*, as same appears from the original filed in said Court on the 5th day of January, A. D. 1909, and now remaining in my custody and control.

IN TESTIMONY WHEREOF, I have hereunto set my hands and affixed the seal of said Court at my office in Chicago, in said District, this 10th day of February, A. D. 1911.

T. C. MacMILLAN,
Clerk.”

2. Counsel for appellee has no objection to the issuance, on behalf of appellant, of a writ of *certiorari*, to be directed to the Clerk of the District Court requiring the Clerk to send up to this Supreme Court a full and complete record.

The papers annexed to the foregoing certificate of the Clerk of the District Court, filed herewith by counsel for appellant, do not make up the complete return of Christopher Strassheim, Sheriff, appellant, upon which the District Court acted. On June 28, 1909, leave was granted the respondent, Christopher Strassheim, Sheriff, “to amend the return by attaching thereto a copy of the remanding order.” (Trans. Rec., p. 27.) Thereupon a paper was filed in the District Court by counsel for the re-

spondent which purported to be an order signed by the Clerk of the Criminal Court of Cook County, Illinois. Said copy of said order is annexed to said return in the files in this cause, in the office of the Clerk of the District Court. A writ of *certiorari* directed to said Clerk requiring him to transmit to this court a certified copy of the return, as amended, will bring up to this court said copy of said order, as well as the original return.

The absence of said copy of said order from the papers which counsel for appellant move to file in this court instanter, and to have them annexed to the record, may explain the "clerical error," mentioned in the affidavit of F. L. Barnett, filed in this court in this cause in support of this motion.

3. The affidavit of F. L. Barnett, which accompanies said motion of appellant, contains, among other things, the following statements:

"This affiant further says that after the *præcipe* in said cause had been prepared it was submitted by this affiant to William S. Forrest, Esq., attorney for appellee, and that said *præcipe* was approved by said counsel and was thereafter filed in the office of the Clerk of the District Court for the preparation of the record from the orders therein contained.

"This affiant further says, from information furnished to this affiant over the signature of James H. McKenney, Clerk of the Supreme Court of the United States, and this affiant believes the facts to be that the said *præcipe* originally contained an order following, to-wit:

"'Filing answer of Christopher Strassheim, Sheriff, and answer.'

but that after said *præcipe* had been so written, certain words of said order were stricken out by

a lien drawn through them, so that the original order was made to read:

"~~Filing answer~~ of Christopher Strassheim, Sheriff, ~~and answer.~~"

"This affiant further says that he does not know when or by whom said words were stricken out, but this affiant does know, and so states the fact to be, that the striking out of said words was a clerical error and said order was not intended by appellant to be so changed in said words to be stricken out, and that the intention of said order was to submit to this Honorable Court the answer or return of Christopher Strassheim, Sheriff, as a part of the record in said cause."

With reference to the statements above quoted from said affidavit of F. L. Barnett, counsel for appellee submits his own affidavit, which is filed herewith and a copy of which is appended below.

William S. Fennel -

Counsel for MILTON DAILY,

Appellee.

Copy of AFFIDAVIT OF WILLIAM S. FORREST,
COUNSEL FOR APPELLEE.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

William S. Forrest, being first duly sworn, upon his oath deposes and says: That affiant is counsel for Milton Daily, appellee in the above entitled cause, and is the William S. Forrest who acted as counsel in the District Court below on behalf of said Milton Daily; that F. L. Barnett, who makes the affidavit which accompanies and is annexed to the motion to amend the record in this cause, was one of the counsel for said Christopher Strassheim in this cause in the District Court below; that said F. L. Barnett did, as stated in his affidavit, prepare and submit to this affiant a *præcipe* for the transcript of the record, and that the *præcipe* which was submitted to this affiant was approved by this affiant, but that the *præcipe* which was approved by this affiant directed the Clerk of the District Court to certify to this court all and singular the pleadings and papers now filed in this court in this cause, specifying said pleadings and papers and including, however, also the return of Christopher Strassheim, Sheriff, to the writ of *habeas corpus*; that affiant never approved any *præcipe* for the transcript of record in this cause which required the

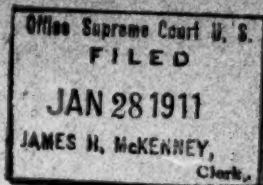
Clerk of the District Court to certify to this court only a part of the record in the court below; that the præcipe submitted by said F. L. Barnett to this affiant and approved by this affiant contained not a single erasure or interlineation, and that not any word or words in the præcipe so submitted by said F. L. Barnett to this affiant and approved by this affiant had any line drawn through them at the time said præcipe was submitted to and approved by this affiant; and that affiant did not know that a line was drawn through any word or words in the præcipe filed with the Clerk of the District Court for the record to be transmitted to this court until he, affiant, on the 10th day of February, 1911, read said affidavit of F. L. Barnett.

William S. Forrest

Subscribed and sworn to before me
this *14th* day of February, 1911.

Chas. A. Buell,

Deputy Clerk of the District Court of
the United States for the
Northern District of Illinois,
Eastern Division.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 638.

**CHRISTOPHER STRASSHEIM, SHERIFF OF COOK
COUNTY, ILLINOIS, APPELLANT,**

vs.

MILTON DAILY, APPELLEE.

**MOTION TO ADVANCE CAUSE UPON THE DOCKET
AND NOTICE.**

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 638.

CHRISTOPHER STRASSHEIM, SHERIFF OF COOK
COUNTY, ILLINOIS, APPELLANT.

vs.

MILTON DAILY, APPELLEE.

And now comes the said appellant by Franz G. Kuhn, Attorney General of the State of Michigan, and moves the Court to advance this cause upon the docket and to hear said cause at a date as early as the convenience of the Court will permit, and for reasons therefor he states:

That the early disposition of said cause in this Court is of great public concern to the people of the State of Michigan in that the writ of habeas corpus is invoked to prevent the defendant in error, Milton Daily, who resides in the City of Chicago, State of Illinois, from being returned to the State of Michigan as a fugitive from the justice of the State of Michigan, pursuant to the laws of the United States respecting interstate rendition, there to answer to indictments found against him by a Grand Jury at the March term, A. D. 1909, in the circuit court for the County of Jackson, State of Michigan, charging him, the said Milton Daily with the crime of bribery, and also the crime of obtaining ten thousand dollars (\$10,000) from

the State of Michigan by false and fraudulent pretenses, in conjunction with one, Andrew J. Eminger of the State of Ohio, and one Allen N. Armstrong, warden of the Michigan State Prison at Jackson.

(A) In 1907 the legislature of the State of Michigan made an appropriation for the installation, maintenance, equipment and operation of a twine and cordage plant at the Michigan State Prison at Jackson (Act 211).

(B) The said Milton Daily in his individual capacity and as sales agent for the Hoover & Gamble Company, a corporation of Miamisburg, Ohio, solicited and secured a contract for the furnishing and equipment of a one hundred and twenty spindle plant, all new machinery, to be manufactured by the said Hoover & Gamble Company (Contract dated July 22, 1907).

(C) The said Milton Daily had purchased a sixty spindle plant at Ayton, Canada, which had been installed by the Hoover & Gamble Company at that place some four years prior to such purchase although it had not been in actual operation but a few months, which old and second hand machinery was shipped to Miamisburg and painted and repaired by the Hoover & Gamble Company and then installed as a part of the machinery of the plant at the Michigan State Prison under the said contract which called for all new machinery.

(D) It appears that the said Milton Daily had a corrupt agreement with said Allen N. Armstrong, warden of the Michigan State Prison, to permit such fraudulent substitution of old and second hand machinery for new machinery, and after its substitution and installation as aforesaid the said Milton Daily paid the said Allen N. Armstrong, warden of the Michigan State Prison, the sum of fifteen hundred dollars (\$1,500) pursuant to their said corrupt agreement.

(E) The indictment for bribery is based upon this transaction between said Milton Daily and said Allen N. Armstrong, then warden of said prison.

(F) The indictment for obtaining ten thousand dollars (\$10,000) from the State of Michigan by false and fraudulent pretenses grew out of the same transaction, the same being a joint indictment found against the said Milton Daily, the said Allen N. Armstrong and Andrew J. Eminger, the said Andrew J. Eminger being secretary of the Hoover & Gamble Company.

(G) The said Milton Daily is charged in due form of law under indictment found by a Grand Jury, with having committed in the State of Michigan, County of Jackson, the crime of bribery, viz: with bribing Allen N. Armstrong, warden of the Michigan State Prison; and also with the crime of obtaining ten thousand dollars (\$10,000) by false and fraudulent pretenses, in conjunction with Andrew J. Eminger and Allen N. Armstrong, and the proceedings for the extradition of said Milton Daily were regular and in proper form and were honored by the Governor of the State of Illinois and his warrant duly issued thereon for the purpose of taking into custody the said Milton Daily and turning him over to the agent of the State of Michigan, to be returned to said State for trial.

(H) The said warrant of the Governor of the State of Illinois was issued under date of May 21, 1909, and immediately after the said Milton Daily had been taken into custody thereunder by the sheriff of Cook County, State of Illinois, a writ of habeas corpus was sued out and obtained from Honorable William H. McSurley, Judge of the Superior Court of Cook County, State of Illinois, and ex-officio judge of the Criminal Court of Cook County, in the State of Illinois, for the purpose of obtaining the release and discharge of said Milton Daily from his arrest and detention under the said warrant of the Governor of the State of Illinois, which application therefor was to all intents and purposes the same as the application of the said Milton Daily for a writ of habeas corpus in the District Court of the United States, for the Northern District of Illinois. (Writ of habeas corpus issued in Cook County criminal court May 25, 1909.)

(I) The said matter came on for hearing in said Criminal Court of Cook County before the Honorable Willard McEwen, a Judge of said Superior Court of Cook County, and ex officio Judge of said Criminal Court of Cook County, and after a full hearing thereon the Honorable Willard McEwen refused to discharge the said Milton Daily and on the 23rd day of June, A. D. 1909, ordered said Milton Daily to be remanded into the custody of the sheriff of Cook County to be by him delivered to the agent of the State of Michigan for return to the State of Michigan for trial on the said indictments.

(J) Immediately after such decision and order by the Honorable Willard McEwen in the said Criminal Court of Cook County, a writ of habeas corpus was issued out of the District Court of the United States, for the Northern District of Illinois, and after a hearing thereon before the Honorable Kenesaw M. Landis, Judge of said Court, it was ordered that said Milton Daily be discharged from the custody, detention and restraint of said sheriff of Cook County, and State of Illinois, by virtue of said extradition warrant of the Governor of the State of Illinois, which order was dated the tenth day of November, A. D. 1909.

(K) By reason of the decision and order of Judge Willard McEwen in the Cook County Criminal Court, and the proceedings had therein the question of the jurisdiction of the District Court of the United States, for the Northern District of Illinois was duly raised.

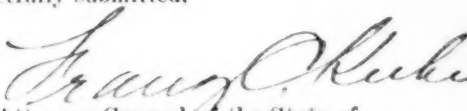
(L) For the purposes of this motion it would seem only necessary to call attention to the fact that the proceedings heretofore taken, and as above outlined, are delaying the enforcement of the criminal laws of the State of Michigan.

(M) That the difficulty in securing the testimony of the witnesses whose names are required to be indorsed on said indictment is enhanced by the delay in bringing the said Milton Daily to trial in the State of Michigan, which makes this case of greater public concern to the people of the State of

Michigan than would be the ordinary criminal case where an appeal was taken to this Honorable Court after conviction.

By reason of the great importance of the issues involved in this cause to the people of the State of Michigan such questions should be determined by this Court at a date as early as the convenience of this Honorable Court will permit.

Respectfully submitted,


Attorney General of the State of
Michigan, Attorney for Appel-
lant.

Business address, Capitol, Lansing, Michigan.

Dated this 26th day of January, A. D. 1911.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 638.

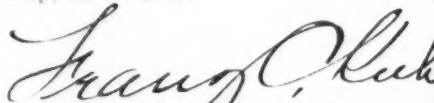
**CHRISTOPHER STRASSHEIM, SHERIFF OF COOK
COUNTY, ILLINOIS, APPELLANT,**

vs.

MILTON DAILY, APPELLEE.

Sir—Please to take notice, that on Monday, the thirteenth day of February, A. D. 1911, I will apply to the said Court by motion to advance said cause upon the docket and to hear it at a date as early as the convenience of the Court will permit. You are herewith served with a copy of said motion.

Dated this 26th day of January, A. D. 1911.



Attorney General of the State of
Michigan, Attorney for Appel-
lant.

To William S. Forrest, 1016 Ashland Block, Chicago, Illinois.
Attorney for Appellee.

State of Michigan, }
 County of Ingham. } ss.

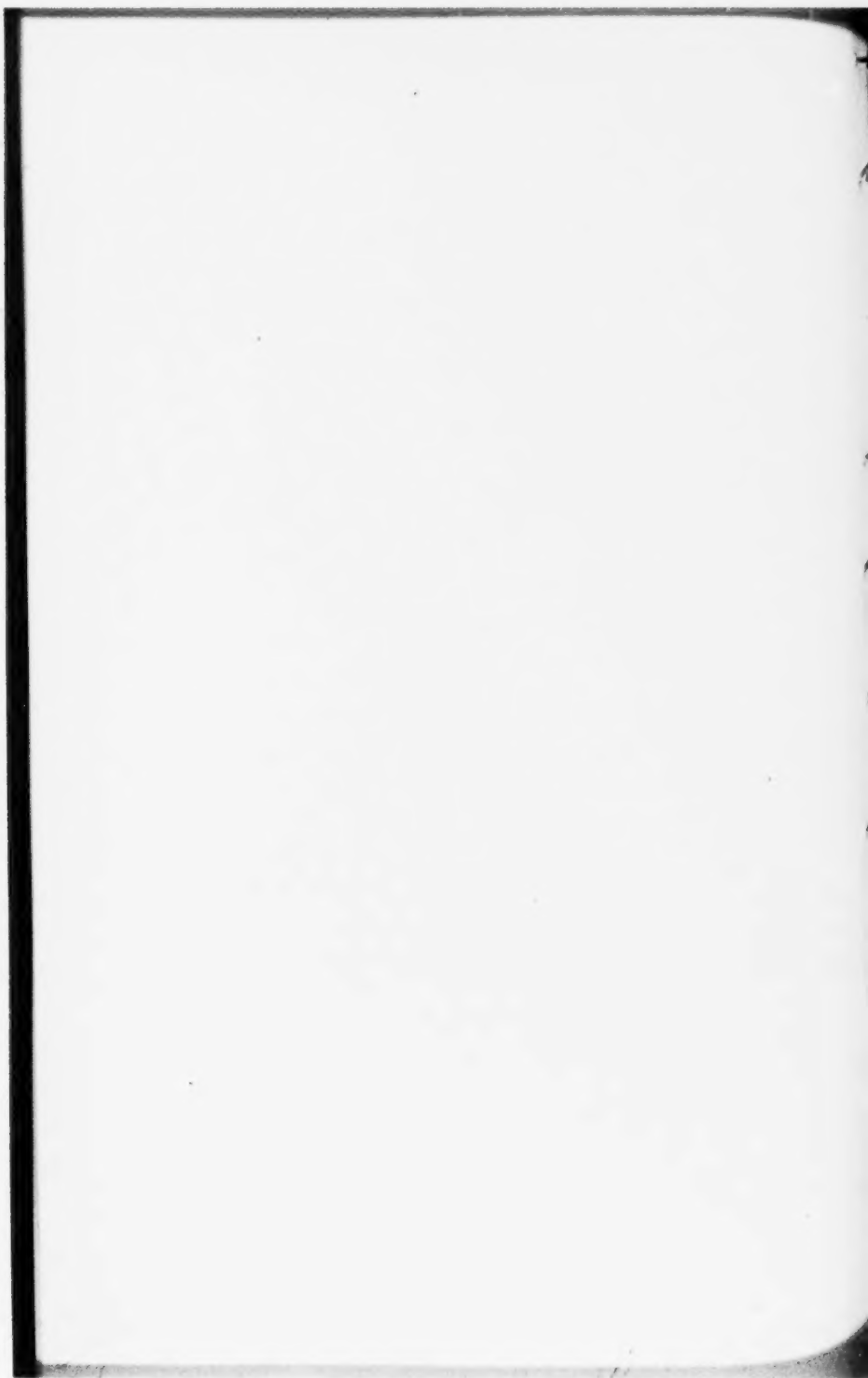
Charles W. McGill, Assistant Attorney General of the State of Michigan, being first duly sworn, deposes and says that he caused copies of the foregoing motion and notice to be served upon the Attorney for said appellee, by depositing two copies thereof in the United States Post Office at Lansing, Michigan, enclosed in a sealed envelope with postage fully prepaid thereon and addressed to Mr. William S. Forrest, Attorney at Law, 1016 Ashland Block, Chicago, Illinois, that being his proper post office address, on the 26th day of January, A. D. 1911.

Subscribed and sworn to before me this 26th day of January, A. D. 1911.

..... Raymond M. LaBar
 Notary Public Bay Mills County, Michigan,

Acting in Ingham County.

Commission expires Feb. 11th 1912



CLERK SUPREME COURT, U. S.
FILED

FEB 28 1911

JAMES M. KENNEY,

CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1910.

No. 638.

CHRISTOPHER STRASSHEIM, Sheriff of Cook County,
Illinois,
Appellant,

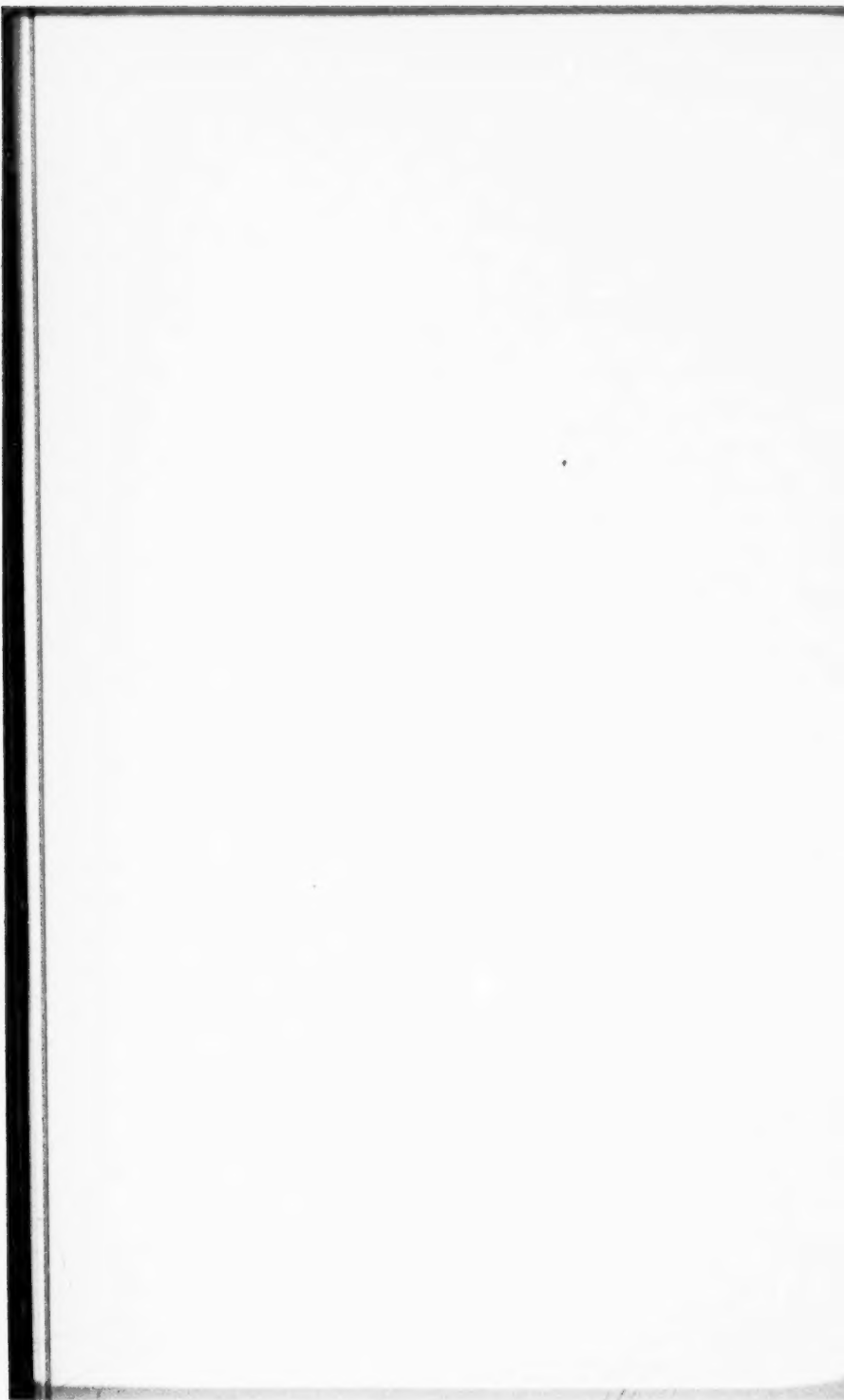
vs.

MILTON DAILY,
Appellee.

Objections by Appellee to Motion by Appellant to
Advance Cause Upon the Docket. Suggestions in
Support of Said Objections.

WILLIAM S. FORREST,

Counsel for Appellee.



IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1910.

No. 638.

CHRISTOPHER STRASSHEIM, Sheriff of Cook County,
Illinois,
Appellant,

vs.

MILTON DAILY,
Appellee.

Objections by Appellee to Motion by Appellant to
Advance Cause Upon the Docket. Suggestions in
Support of Said Objections.

Comes now the said Milton Daily, appellee, by his
counsel, William S. Forrest, and objects to the grant-
ing of motion of the appellant to advance this cause
upon the docket, and requests the court to deny said
motion of the appellant upon the following grounds:

I.

a. This appeal is from a judgment entered in the
District Court of the United States for the North-
ern District of Illinois, Eastern Division, in a cer-

tain proceeding for a writ of *habeas corpus*, which writ was issued by said District Court in response to the petition of Milton Daily, appellee, complaining of, and praying for the discharge of the appellee from, the arrest, restraint and detention of the appellee by said Christopher Strassheim, Sheriff, upon and by virtue of a certain extradition warrant, issued by the Governor of the State of Illinois, in response to the request of the Governor of the State of Michigan.

To the writ of *habeas corpus* said Christopher Strassheim, Sheriff, in due form of law, filed in said District Court a return, in writing, which return, to the personal knowledge of counsel for appellee, is now among the files in this cause in the office of the Clerk of said District Court.

b. A copy of said return has not been incorporated into the transcript of the record filed in this court. The appellant was ordered by the District Court to incorporate, among other things, in the transcript of the record for this Supreme Court, said return. See petition by appellant for the appeal and the order of the District Court allowing same. (Trans. Rec., 59, 62.)

c. Moreover, the District Court ordered to be transmitted to this court, in this cause, "a certified copy of the entire record." The certificate of the Clerk is that the record is complete "in accordance with the *præcipe* filed herein." The *præcipe* does not order the Clerk to incorporate a copy of said return into the record. (Trans. Rec., 150.) Hence, the appellant caused said return not to be incorporated into the transcript of record.

d. Until appellant files in this court "a certified copy of the entire record," it is insisted that he is not entitled to be heard to have his cause advanced upon this docket. It appears, however, that the record is complete, barring said return, and a prayer for the reversal of the judgment.

Nor does the record in this cause contain a prayer for the review or reversal of the judgment entered in the District Court on behalf of the appellee. (See petition for appeal and the assignment of errors, Trans. Rec., 60-62.)

e. After the filing of the return of Christopher Strassheim, Sheriff, the following proceedings, in the following order, were had in the District Court:

A stipulation signed by both of the parties that the application and petition for the writ of *habeas corpus* be taken as the answer of the petitioner, Milton Daily, to said return of said Christopher Strassheim. (Trans. Rec., 26.)

Leave given Christopher Strassheim, Sheriff, to amend said return "by attaching thereto a copy of the remanding order." (Trans. Rec., 27.)

A demurrer by Christopher Strassheim, Sheriff, to the answer of the petitioner. (Trans. Rec., 27.)

The overruling of said demurrer by the District Court. (Trans. Rec., 28.)

The filing of an amended answer by the petitioner to said return of Christopher Strassheim, Sheriff. (Trans. Rec., 30.)

The reception of evidence by the court on behalf of the respective parties. (Trans. Rec., 57, 58, 67-149.)

Argument by counsel on behalf of the respective

parties and the final order of the District Court discharging the petitioner, Milton Daily, from the custody, detention and restraint of Christopher Strassheim, said Sheriff, under and by virtue of the extradition warrant; which order recites, among other things, that the cause came on to be heard upon the petition, etc., and upon the writ of *habeas corpus*, etc., and upon the return of said Christopher Strassheim, said Sheriff, to the writ of *habeas corpus*. (Trans. Rec., 58-59.)

The order of the District Court allowing an appeal to the Supreme Court of the United States from the judgment and order of discharge heretofore filed and entered in the District Court, "and that a certified copy of the entire record, including the petition, writ of *habeas corpus*, demurrer to the petition, return of respondent, * * * be transmitted to the Supreme Court of the United States." (Trans. Rec., 59-60.)

The petition for the allowance of an appeal to this court "and that a transcript of the entire record, including the petition for writ of *habeas corpus*, the demurrer of respondent, return of respondent * * * duly authenticated may be sent to the Supreme Court of the United States." (Trans. Rec., 62.)

The Clerk of the District Court certifies "the above and foregoing to be a true and complete transcript of the record in case No. 10309—application of Milton Daily for a writ of *habeas corpus*, prepared in accordance with *præcipe* filed herein." (Trans. Rec., 151.)

The copy so certified by the Clerk of the District

Court is not a copy of the record ordered, to-wit, is not "a certified copy of the entire record, including the petition, writ of *habeas corpus*," etc. (Trans. Rec., 59-60.)

Nor is it a copy of the record prayed for by the appellant.

The original præcipe, it is learned from the Clerk of the District Court, instead of a copy of the præcipe, was attached to the transcript of the record, and is probably now among the files of this cause in the office of the Clerk of this Supreme Court.

The third item in the præcipe for the record reads as follows, in the printed transcript, under date of June 23, 1909: "Christopher Strassheim, Sheriff," meaning, taken literally, that the Clerk of the District Court should certify, as part of the entire record, Christopher Strassheim, Sheriff. There is probably a clerical error in this item. It was probably intended to read as follows: "The return of Christopher Strassheim, Sheriff, to the writ of *habeas corpus*."

II.

The ground of the motion of appellant to advance this cause upon the docket is, in substance, that the *habeas corpus* proceedings in the District Court were brought for the purpose of "delaying the enforcement of the criminal laws of the State of Michigan," and that the appellee has succeeded in so doing without warrant of law. This contention of appellant is sought to be sustained by an imperfect and, therefore, misleading statement of those proceedings, it is respectfully submitted.

Counsel for appellee deems it his duty to present herein, as briefly as possible, a correct statement of those proceedings, and *some* of the issues of law and fact involved therein, so far as the same are referred to in the suggestions filed in support of the motion of appellant to advance this cause upon the docket of the court.

The claim of the appellant in the District Court was that Daily, the appellee, was charged, in the State of Michigan, with the crime of obtaining from the State of Michigan, by false pretenses, the sum of \$10,000, *on the 1st day of May, 1908*, and also with the crime of giving as a bribe, *on the 13th day of May, 1908*, the sum of \$1,500, to Allen N. Armstrong, warden of the State Prison at Jackson, in the County of Jackson, in the State of Michigan; and that the appellee was corporeally in the State of Michigan on said 1st and 13th days of May, when said crimes were committed, and was subsequently found in the State of Illinois, and, therefore, was a fugitive from the justice of the State of Michigan.

In support of said claim, in the District Court, the appellant relied upon the extradition warrant of the Governor of the State of Illinois, copies of said two indictments and a certain affidavit of said Allen N. Armstrong, which, among other papers, accompanied the requisition of the Governor of the State of Michigan, and also upon the oral testimony of said Allen N. Armstrong, which oral testimony of said Armstrong differs *materially* from what is stated in said affidavit by said Armstrong.

The claim of Daily, appellee, in the District Court was as follows:

1. Said indictment for obtaining \$10,000 by false pretenses did not charge Daily with the commission of any crime against the laws of the State of Michigan.

2. Said indictment for bribing said Allen N. Armstrong did charge Daily, the appellee, with the commission of the crime of bribery against the laws of the State of Michigan, by giving said Armstrong \$1,500 *on the 13th day of May, 1908.*

3. Daily, the appellee, was not in the State of Michigan on the 13th day of May, 1908, or on the 1st day of May, 1908 (May 1, 1908, being the day on which it is alleged in the indictment for obtaining \$10,000 by false pretenses that said crime of obtaining money was committed), or on any other day on or about said 1st and 13th days of May, 1908; and that at no time did Daily, the appellee, while corporeally in the State of Michigan, do any act whatever, which amounted to setting in motion the machinery for the commission of the crime of obtaining \$10,000 by false pretenses (if such crime was charged in the papers which accompanied the requisition), or for the commission of said crime of bribery.

In support of said claim Daily, the appellee, offered in evidence all the papers accompanying the requisition, his own testimony, the testimony of divers other witnesses and much documentary evidence, all of which testimony and documentary evidence is set forth in the bill of exceptions, which

occupies eighty-three pages of the printed transcript of record.

4. The evidence so offered in the District Court on behalf of Daily, the appellee, conclusively shows (and it was so conceded by counsel for the appellant on the hearing in the District Court) that Daily, the appellee, was not in the State of Michigan on the 1st or 13th days of May, 1908, or on any other day on or about the 1st or 13th days of May, 1908. In fact, no evidence at all was offered on behalf of appellant which in any way, directly or indirectly, tended to prove the contrary, nor was any evidence offered which in any way tended to prove that Daily at any time, while corporeally in the State of Michigan, committed any crime therein, or set in motion any machinery for the commission of any crime against the laws of the State of Michigan.

The District Court held, among other things, in overruling the demurrer of the respondent to the answer of Daily, the appellee, to the return of the appellant (Trans. Rec., 149), that the matters and things alleged in said indictment for obtaining \$10,000 from the State of Michigan, did not charge the commission of any crime against the laws of the State of Michigan.

It was claimed in the District Court, and it is claimed in this court, on behalf of appellee, that the matters and things alleged in said indictment for obtaining \$10,000 from the State of Michigan by false pretenses do not constitute any crime against the laws of the State of Michigan.

The theory of the indictment for obtaining the

\$10,000 by false pretenses was that Daily, as agent for the Hoover & Gamble Company, manufacturers in Miamisburg, Ohio, of machinery for making twine and cordage, and one Eminger, the secretary of said Hoover & Gamble Company, obtained from the State of Michigan \$10,000 by means of a contract entered into between the three members of the Board of Control of the Michigan State Prison at Jackson, Michigan (of which prison said Allen N. Armstrong was then warden), and said Hoover & Gamble Company, whereby said Hoover & Gamble Company agreed to furnish the State of Michigan, to be installed in said State Prison, certain *new* machines "for the manufacture of binder twine, and capable of producing 9,600 lbs. of mercantile binder twine in a work-day of eight hours with a sufficient force of operatives"; and that in the performance of said contract, to the knowledge of the defendants, Daily, Eminger and said Armstrong, machinery was furnished which had been used and was not new; and that Daily, prior to the execution of said contract, promised said Armstrong a sum of not less than \$1,000 to permit, and that, influenced by said promise, Armstrong did permit, as warden of said State Prison, the installation of the machinery furnished, instead of new machinery; and that by means of said contract and said practices said \$10,000 (being about one-third of the contract price) and the particular 25% thereof hereafter specified, was obtained from the State of Michigan, and that said acts of Daily, Eminger and Armstrong constituted the crime of obtaining \$10,000 from the State of Michigan by false pretenses.

Whether the machines furnished were as efficient

and durable as new machines, and "*capable of producing 9,600 lbs. of mercantile binder twine in a working day of eight hours with a sufficient force of operatives,*" the indictment and all other papers accompanying the requisition are wholly silent. The essence of the alleged false representations is that the machines furnished were *not new*.

Said contract is set out in full at pages 40-42 of the transcript. The contract price was \$29,680. The contract, *inter alia*, provided as follows:

"Fourth. It is further mutually agreed by and between the parties hereto that the said party of the second part guarantees the machinery above mentioned to be a complete plant for the manufacture of binder twine and capable of producing 9,600 lbs. of mercantile binder twine in a working day of eight hours with a sufficient force of operatives. Also that the said party of the second part guarantees that all the machinery above mentioned shall be constructed in a thorough manner, free from any defects of materials or workmanship, and finished in a first-class manner, also that it shall be of the latest approved patterns."

* * * * *

"Sixth. * * * Full payment shall be made upon receipt of each bill of lading for the machinery shown on said bill until 75% of the total amount shall have been paid. The remaining 25%" (the portion alleged to have been obtained by false pretenses) "shall then be retained until the machinery is all installed, and tested, and operating so as to fulfill the guarantee above given, to the satisfaction and approval of C. G. Wrentmore, Cons. Engr. of the Board of Control." (Trans. Rec., 41.)

The contract further provides for the giving of a bond in the sum of \$10,000 by the Hoover & Gamble Company for the faithful performance of the contract, etc.

The appellee does not rely upon the insufficiency of said indictment as a pleading, but upon the insufficiency of the facts, matters and things, therein alleged, to constitute the crime of obtaining money by false pretenses—the test laid down by this court, for the sufficiency of an indictment in interstate extradition proceedings in

Pierce v. Creecy, 210 U. S., 387, 404.

Such was the rule followed by the District Court in holding that Daily was not charged in the papers which accompanied the requisition and extradition warrant, with obtaining \$10,000 from the State of Michigan.

The grounds upon which Daily, appellee, claims that the matters, facts and things stated in the indictment for obtaining \$10,000 by false pretenses do not constitute any crime against the laws of the State of Michigan, are, in substance, as follows:

1. Said indictment lacks an allegation that the money obtained was the property of the people of Michigan. Such allegation is essential under all the authorities, including the decisions of the Supreme Court of Michigan.

People v. Arnold, 46 Mich., 271, 273.

2. It lacks an allegation of the name of the person to whom, if to anyone, the alleged false representations were made. Such an allegation is essential for

reasons that are apparent. All the precedents contain such an allegation, and precedents rank next below decisions as authorities.

2 Bish. New Crim. Proc., Sec. 173. 3.

It is consistent with all the allegations that the false representations, if any, were made to some person, if to any person, not representing the Board of Control or the State of Michigan. Under the terms of the contract no false representation could be effective, unless it was made to Wrentmore, the consulting engineer of the Board of Control and the person made the sole judge by the contract whether the machines were such as were contracted for.

3. The false pretenses alleged (in the indictment for obtaining \$10,000 by false pretenses) are, in substance, that the machinery was new and unused and complied with the requirements of the contract, whereas it was not new, but was old, worn and used, and did not comply with the terms of the contract. The negation is literal and is pregnant with the implication that the machines had been used for one minute before being installed in the State Prison.

Whether the machines delivered and installed were such as were contracted for could be determined by Wrentmore the consulting engineer of the Board of Control, and the members of the Board as well as by Daily. Hence there was no crime of obtaining money by false pretenses committed.

Com. v. Norton, 11 Allen, 226, 267, 268.

Com. v. Drew, 19 Pick, 179, 184, 185.

4. The difference between the machines furnished and the machines ordered was not substantial. They

were in use in the State Prison for more than a year, to-wit, from March 17, 1908, till about the day of the return of the indictment, May 1, 1909, before it was ascertained that some of them were not new, and this fact was learned solely from Allen N. Armstrong, who on or about May 1, 1908, stated that he had been bribed by Daily to permit the installation of certain machines that had been used. Nothing about the machines themselves showed that any of them were not new.

Armstrong's Affidavit, Trans. Rec., 50.

Return of Indictments, Trans. Rec., 43, 48.

The contract was substantially complied with and under the decisions of the courts in Michigan, as well as of other states and of the United States, the full contract price could be recovered in an action at law.

American Hoist & Derrick Co. v. Johnson,
114 Mich., 172.

Meincke v. Falk, 61 Wis., 623.

Lyon v. Bertram et al., 20 How. (U. S.),
149, 153.

The machines delivered were the precise kind contracted for.

5. The false pretenses alleged could not defraud the members of the Board of Control or Wrentham, the consulting engineer of the Board of Control, for they had the opportunity to examine and to test, and presumably did examine and test the machinery before the \$10,000 were paid on May 1, 1908. The contract literally provided for such testing, and the machinery commenced operation on March 17.

1908, according to Armstrong's affidavit (Trans. Rec., 87), and the indictments were returned, as the record shows, on May 1, 1909. It appears, therefore, that after thirteen months' use of the machinery by the State of Michigan, all that is claimed respecting it is that it was not new at the time it was delivered to the State of Michigan. It must, then, have complied with all the guaranties provided for in the contract. What more could have been required?

6. The contract (as set out literally in the indictment for bribery and described generally but not set out literally in the indictment for obtaining the \$10,000 by false pretenses) for furnishing the machinery to the Board of Control of the State of Michigan, contained this provision, namely:

"The remaining 25% shall then be retained until the machinery is all installed and tested and operating so as to fulfill the guaranty above given to the satisfaction and approval of C. G. Wrentmore, Consulting Engineer of the Board of Control."

See said contract, Article Sixth, page 41 of the Transcript of Record.

Said provision conclusively shows that the authorities of the State of Michigan, contracted not to rely, and did not rely, upon any representations to be made, or that were made, by Daily, the appellee, or by any other person, but, on the other hand, contracted to rely, and did rely, in the purchase and acceptance of said machinery only upon the judgment of the consulting engineer of the Board of Control. Moreover, no possible false representations

could have been effective under said contract in inducing the Board of Control to accept and pay for the machinery in question, except a false representation made to said Wrentmore. And the record is wholly barren even of an allegation that a false representation was made to said Wrentmore, or to any other person.

Where the parties to a contract provide in the contract that its faithful performance shall be determined by a third person named therein, both parties are bound by the determination of that person in the absence of fraud operating upon that person or by him.

Fowler v. Deakman, 84 Ill., 130.

7. It is essential to the commission of the crime of obtaining money by false pretenses that the party alleged to be defrauded should have relied on the false pretenses. In this case the papers which accompanied the requisition show conclusively that the reliance of the Board of Control was upon the guaranties provided for in the contract and upon the judgment of Mr. Wrentmore, the consulting engineer of the Board of Control. There is no allegation or showing that the contract was obtained by false representations and that the money was obtained by means of the contract and, therefore, that the money was obtained by the false pretenses, notwithstanding that the contract intervened between the false pretense and the obtaining of the money.

8. The contract was to deliver property of a certain description, and when delivered it is alleged it turned out not to be of that description, that is, was

not new. Such failure to comply with a contract does not constitute the crime of false pretenses.

1 McClain C. L., Sec. 676.

Com. v. Haughey, 3 Met. (Ky.), 223.

9. Besides, it is manifest from the terms of the contract that the Board of Control relied upon the guaranties therein, as well as upon the judgment of Wrentmore. This fact, of itself, takes the case out of the statutes for obtaining money by false pretenses.

State v. Chun, 19 Mo., 233.

State v. Butler, 47 Minn., 483.

Fay v. Com., 28 Grattan, 912.

Rex v. Codrington, 1 C. & P., 661.

10. Both the bid made by Daily, the appellee, for the contract, and the contract, are wholly executory, and, therefore, every statement in the bid and in the contract on the part of Daily, and of the Hoover & Gamble Company, for whom Daily was acting, was a promise to do something in the future. A promise to do something in the future is not a representation of a past or present fact or condition, and therefore, is not a false pretense.

11. It must appear upon the face of every indictment for obtaining money by false pretenses, that a fraud has been accomplished and that somebody has been injured. It does not appear upon the face of the indictment for obtaining the \$10,000 by false pretenses that the State of Michigan or any other person has been injured. Taking together all the papers which accompanied the requisition, it clearly appears that the State of Michigan was not injured

because of the matters alleged in the indictment for obtaining the \$10,000 by false pretenses. The State of Michigan, assuming every claim on behalf of the State of Michigan to be true, lost nothing whatever by the manner in which the contract was performed, except the difference between new machinery and machinery about half of which had been in use forty-five days. (Trans. of Rec., 134, 135.) It does not appear from the allegations of the indictment, or from the evidence in the record, that the machinery furnished was not as efficient and as durable as new machinery. It is a well-known fact that machinery used for one or two months is more efficient than machinery which is absolutely new, and it fully appears that what the State of Michigan was deprived of, so far as the matters alleged in the indictment for obtaining \$10,000 by false pretenses are concerned, is so slight, so vague, so indefinite, so tenuous, as not to admit of a statement thereof in an affidavit or an indictment. Such a thing falls within the rule, *de minimis lex non curat*.

12. Moreover, it is not to be overlooked that if it be held that the indictment for obtaining the \$10,000 from the State of Michigan by false pretenses is held to be good, it still remains that the evidence in the record conclusively shows that Daily, the appellee, was not in the State of Michigan on the 1st day of May, 1908, the day on which it is alleged in every count of said indictment that the crime therein sought to be charged was committed. (Trans. Rec., 44-48.)

III.

The entire evidence in the record as to the alleged giving of the bribe by Daily to Allen N. Armstrong, and as to the time and place where said bribe was given, is as follows:

1. In every count of the indictment for bribery it is alleged that Milton Daily, *on May 13, 1908*, at the City of Jackson, in the County of Jackson, in the State of Michigan, gave the said Allen N. Armstrong as a bribe the sum of \$1,500. (Trans. Rec., 4-13.)

2. Said Armstrong, in his affidavit accompanying the requisition papers, states that a few days prior to July 19, 1907 (the day on which the Hoover & Gamble Company's bid for furnishing the machinery to the Board of Control was accepted by the Board of Control), Daily promised him a present of at least \$1,000, if he (Armstrong), would permit him (Daily) to substitute the Ayton machinery (the machinery which had been used) for an equal amount of new machinery in the event a contract was made for the purchase of new machinery for the manufacture of twine and cordage at the Michigan State Prison, and that on or about May 13, 1908, the said Milton Daily paid him, Armstrong, \$1,500. (Trans. Rec., 19.)

Observe that in said affidavit *the place where*, either said promise or said \$1,500 was given is suppressed, although Armstrong, if any person, knew absolutely the place where said promise was given and the place where said \$1,500 were given.

3. Leonard A. Busby, a witness on behalf of Daily on the hearing in the District Court, testified in his cross examination, conducted by counsel for appellant, that he, Busby, in the presence of Milton Daily, in March, 1909, at South Bend, Indiana, held a conversation with said Allen N. Armstrong, in which conversation Armstrong, in reciting the history of the events upon which the two indictments previously mentioned were based, said:

“He (Allen N. Armstrong) told me (Busby), that Mr. Daily had sold a plant over there which was put into the prison in the early part of 1908, March, if I remember rightly, and afterwards was approved and accepted, that in the May following he saw Mr. Daily in Chicago and said: ‘You have had your plant put in over there, you have got it in, and if it is accepted you are going to get your money, and you have sold it at a good price. I am a poor man and I want you to make me some allowance out of this.’ And he (Armstrong) said that he and Daily had some talk in reference to that, and as a result of that talk, Mr. Daily told him he would consider it and that afterwards he (Daily) sent him (Armstrong) \$1,000 or \$1,500, I think it was the latter. He said he had not talked with Daily with reference to that phase of the transaction prior to that time and that he never mentioned it to him while they were over there.” (Trans. Rec., 95.)

4. In his testimony upon the hearing in the District Court Allen N. Armstrong made no mention of receiving \$1,500, or any other sum of money, or any other thing, from Daily. But in said testimony he (Armstrong) did testify that the above mentioned promise of \$1,000 was made to him by Daily in the

City of Chicago, in the State of Illinois. (Trans. Rec., 142.)

Attention is called to the suppression of the place where (the gist of the issue in interstate extradition proceedings) the bribe was received by Armstrong, although he knew where it was, if anywhere. Furthermore, *Armstrong knew something at least of how Daily sent him the bribe*, if Armstrong's statement to Busby be true, and yet this knowledge, also, of Armstrong is suppressed.

The only evidence of where the bribe was given to Armstrong offered either in the extradition proceedings or the *habeas corpus* proceedings in the District Court, was the allegation in the indictment for bribery, to the effect that it was given in the City of Jackson, in Jackson County, Michigan, and that was the only evidence that it was incumbent upon the appellee to overcome, which he did clearly and conclusively overcome by the eighty-three pages of the testimony and documentary evidence, found in the bill of exceptions.

IV.

It remains to call the court's attention to the law with reference to the claim of the appellant, set forth in the pending motion, that the District Court of the United States was without jurisdiction to issue the writ of *habeas corpus* in the proceeding now before this court, for the reason that Daily, after he had been remanded to the custody of Christopher Strassheim, Sheriff, the appellant, by the final order (as it is claimed by counsel for appellant) of

the Criminal Court of Cook County, Illinois, should have appealed from the judgment of said Criminal Court of Cook County, Honorable Willard M. McEwen presiding, directly to this Supreme Court, instead of suing out of writ of *habeas corpus* in the District Court of the United States for the Northern District of Illinois, Eastern Division.

The facts concerning the hearing in the writ of *habeas corpus* before said Honorable Willard M. McEwen were fully stated in Daily's petition to the District Court for the writ of *habeas corpus* in the proceedings now in this Supreme Court of the United States, and also in the amended answer of Daily to the return of Christopher Strassheim, Sheriff, in said proceeding. (Trans. Rec., 23-24, 54-55.)

It appears, therefore, that all the facts concerning the proceeding before the Honorable Willard M. McEwen were, in good faith by Daily called to the attention of the District Court in apt time in due form of law. After the Honorable Willard M. McEwen ordered Daily to be remanded to the custody of the Sheriff the Honorable Willard M. McEwen, at the request of counsel for Milton Daily, appellee, also directed said Sheriff to retain Milton Daily in his custody until he, Milton Daily, by his counsel, could make application for the writ of *habeas corpus* to the District Court of the United States, which application counsel for Daily made forthwith, and obtained the writ in the proceedings now before this court.

The matters stated in Daily's petition and in his amended answer in this cause now in this court show clearly that the *habeas corpus* proceedings before

the Honorable Willard M. McEwen were conducted before him as a judge of the Superior Court of Cook County and *ex-officio* judge of the Criminal Court of Cook County, and not before the Criminal Court of Cook County, the said judge presiding. The transcript of the record contains no evidence that said *habeas corpus* proceedings were before the Criminal Court of Cook County, Honorable Willard M. McEwen, presiding.

Based upon the facts in this proceeding as above set forth, appellee's contention respecting the jurisdiction of the District Court of the United States, raised by the appellant herein, are as follows:

1. The proceedings in the writ of *habeas corpus* before the Honorable Willard M. McEwen were before him as a judge, and not before said Criminal Court of Cook County.

To a final order by a judge in *habeas corpus* proceedings, no appeal or writ of error lies to this Supreme Court of the United States.

2. Moreover, under the laws of the State of Illinois, no appeal or writ of error lies to any other Illinois judge, or to any other Illinois court, from the decision of any Illinois judge or any Illinois court in *habeas corpus* proceedings; but, on the other hand, under the laws of Illinois, the order of any Illinois judge or any Illinois court in *habeas corpus* proceedings, remanding the petitioner to, or discharging the petitioner from, arrest or detention or custody, claimed by the petitioner to be in violation of law, is final.

Ex parte Thompson, 93 Ill., 89.

Hammond v. The People, 32 Ill., 446.

Wallace v. Cleary, 5 Ill. App., 384.

It appears, therefore, as alleged in the petition and amended answer of Daily in the District Court that Daily, the appellee, had exhausted all the remedies given and granted to him by the laws of Illinois for seeking to obtain, and for obtaining, his discharge from arrest and detention by Christopher Strassheim, Sheriff, under and by virtue of the extradition warrant at the time he, Daily, applied for the writ of *habeas corpus* in the District Court of the United States.

4. But, even if it should be held that the first *habeas corpus* proceedings were not before said Honorable Willard M. McEwen as a *judge* but were before said Criminal Court of Cook County, nevertheless, upon that supposition the petitioner, Daily, had exhausted all his remedies in the courts of Illinois before he applied for the writ of *habeas corpus* to the District Court for the Northern District of Illinois, Eastern Division, and, therefore, said District Court did not in any way violate any rule of law or comity in issuing the writ of *habeas corpus* and had jurisdiction to issue the same. In that event, that is, in the event that said *habeas corpus* proceedings were before the Criminal Court of Cook County and not before the Honorable Willard M. McEwen as a judge, an appeal or writ of error would lie to this Supreme Court for a review of said proceedings. That being so, the course pursued in the District Court is not calculated to disturb the relations existing between the judicial tribunals of the State of Illinois and the judicial tribunals of the United States.

Ex parte Royall, 117 U. S., 253.

After the Criminal Court of Cook County had exhausted its jurisdiction in the premises, if it ever had or assumed to have jurisdiction thereof, inasmuch as no appeal or writ of error lay therefrom to any other court or to any other judge in the State of Illinois, it was wholly immaterial whether an appeal was taken directly from said Criminal Court to this Supreme Court, or whether, instead thereof, another writ of *habeas corpus* was sued out in the District Court of the United States.

The District and Circuit Courts of the United States have jurisdiction to issue a writ of *habeas corpus* in interstate extradition proceedings prior to any application to a state court for such a writ in such proceedings.

Pierce v. Creecy, 210 U. S., 387.

Such proceedings are under the Constitution and laws of the United States and not under the Constitution or laws of any state.

V.

As to the assumed difficulty of securing the testimony of witnesses on behalf of the State of Michigan.

There is no showing in the motion or the suggestions filed in support thereof that any such difficulty exists. The evidence against Daily under both indictments consists of the contract, previously specified, the payments under the contract, the bills presented, the machinery itself, the testing of said machinery by Wrentmore and the use thereof during the last three years, the testimony of Michigan of-

fcials and of said Armstrong, all of which evidence is in the keeping and control of the State of Michigan.

V I.

As to the importance of the issues involved in this case to the State of Michigan. The State of Michigan is not in this court with clean hands, and because of its previous conduct of the proceedings, is not entitled to the relief asked.

The issues involved in this case are not greater than the issues involved in any other indictment for felony pending in the Michigan tribunals.

Milton Daily, the appellee, has convinced the District Court below that he is not a fugitive from the justice of the State of Michigan, as alleged in the requisition and extradition warrant. He is in this court as appellee, and is under bond to surrender himself, if the judgment of this court is adverse to his contentions. There is no danger that he will attempt to escape, or to refuse to abide by the judgment of this court. The order discharging him from the custody of the appellant under and by virtue of the extradition warrant was entered in the District Court below on November 10, 1909. The District Court ordered the appellant to file in this Supreme Court a transcript of the record on appeal within 30 days from said November 10, 1909. (Trans. Rec., 58-59.) That order was not complied with, but, on the other hand, the appellant delayed compliance with it—the authorities of the State of Michigan representing the appellant—until July 14, 1910, a period of eight months' delay by the State of Mich-

igan. Nor has the State of Michigan as yet complied with Rule 8.3 of this court and brought up a complete record and the record which it was ordered, upon its own application, by the District Court to bring up.

Milton Daily has been guilty of no *laches* in the premises, and has not delayed the proceedings a minute.

For all the reasons hereinbefore stated, Milton Daily, by his counsel, objects to the advancement of this cause upon the docket, and if it is deemed by this court to be the duty of the appellee, instead of the appellant, to complete the record by bringing up the return of Christopher Strassheim, Sheriff, to the writ of *habeas corpus*, the appellee will perform that duty.

Respectfully submitted.

William S. Forest
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Counsel for Milton Daily, Appellee.
Office address, 1016 Ashland Block,
Chicago, Illinois.

FILED.

MAR 20 1911

JAMES H. MCKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 638.

CHRISTOPHER STRASSHEIM, SHERIFF OF COOK
COUNTY, ILLINOIS, APPELLANT,

vs.

MILTON DAILY, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN DIS-
TRICT OF ILLINOIS.

BRIEF FOR APPELLANT.

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CHARLES W. MCGILL,
Of Counsel.

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vs.

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APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF ILLINOIS.

BRIEF FOR APPELLANT.

STATEMENT OF FACTS.

The Appellee, Milton Daily, was held by appellant under an executive warrant of the Governor of Illinois, bearing date May 21st, 1909, directing his delivery to the agent of the State of Michigan, application having been duly made by the Governor of the said State of Michigan under date May 19th, 1909, for the extradition of said Daily on a charge of bribery and also on a charge of obtaining money by false pretences.

While so held by appellant a writ of habeas corpus was issued on petition of said Appellee by the Honorable Kenesaw M. Landis, Judge of the District Court of the Northern District of Illinois, and upon hearing subsequently had thereon said Milton Daily was discharged from said arrest by the judgment of the court from which order of discharge the appellant takes this appeal.

For a full understanding of the questions involved so far as the same were disclosed at the hearing before the District Court, a recital may be given of the facts out of which arose the indictments which were the basis of the requisition of the Governor of Michigan, which was honored by the Governor of Illinois.

In the year 1907 the Legislature of the State of Michigan passed an act providing for the installation, equipment and operation of a twine and cordage plant in the State Prison located at Jackson, and by the terms of said act the Warden of said State Prison was authorized in connection with the Board of Control of the institution to purchase for and in behalf of the State the necessary machinery for such plant.

At the time of the passage of the act, Milton Daily, the appellee, was engaged in the business of selling sisal out of which such twine and cordage is made, and also the machinery necessary for its manufacture.

The machinery sold by him was that manufactured by the Hoover and Gamble Company of Miamisburg, Ohio, of which firm he was agent, residing at Chicago.

Bids were solicited by the Board of Control for the machinery necessary to install a 120 spindle twine system, and in response thereto sundry bids were submitted.

Prior to this time Daily had purchased on his own account machinery previously installed in a cordage plant at Ayton, in the Province of Ontario, Canada, which machinery had been used to some extent at that point. It was of the manufacture of the Hoover and Gamble Company and had constituted a plant of sixty spindle capacity.

Among the bids submitted to the Board of Control and the Warden under the authority of said act, was one from Daily offering this second hand machinery at a lower price than a bid made in the name of the Company for new machinery.

The Board after due consideration declined to purchase such second hand machinery, fearing that the purchase of it

might be used to depreciate with the trade the quality of the twine manufactured by the State and thus lessen the chances of sale.

The Warden was directed by the Board to obtain from Daily another bid for all new machinery, which said bid Daily, as the agent for the Hoover and Gamble Company furnished, offering to equip the plant for the sum of \$29,105.00 with all new machinery. This bid was accepted by the Board of Control and a contract duly made in accordance therewith with the Hoover and Gamble Company.

Prior to the tender of said last mentioned bid, Daily had entered into a conspiracy with Allen N. Armstrong, the Warden of the Michigan State Prison, and with the Hoover and Gamble Company in whose name the said contract was taken, that in place of the new machinery called for by the bid and the contract, the second hand machinery, before spoken of should be removed from Ayton, Canada, to the shops of the Hoover and Gamble Company in Ohio, there repainted and furnished with certain new parts, and should then be re-shipped to the Michigan State Prison as the machinery provided for by the contract in question. The testimony of Mr. Armstrong, the ex warden, is found in the record (Rec. 209, Abs. 86) and established the fact that pending the furnishing of the bid by Daily last above set forth, Armstrong had been approached by Daily in the City of Chicago, to permit said second hand machinery to be installed in pretended compliance with the contract, and not to expose the deception, in return for which he was to receive from Daily a present of a thousand dollars or more.

The machinery was installed, including the second hand machinery which had been removed from Ayton, repainted and finished in the shops at Miamisburg and after shipment was completed, settlement and payment was made therefor, and later Armstrong, then warden of said prison, received through the hands of the son of Daily a present of \$1,500.00 in money.

On May 1st, 1909, a grand jury, sitting in said county of Jackson, indicted Milton Daily for the crime of bribery of Armstrong, and also indicted Armstrong, Daily and one Andrew J. Eminger, who was then the secretary of said Hoover and Gamble Company, upon the charge of obtaining from said State of Michigan by the false pretences before set forth, the purchase price of said machinery supposed to have been new, but in fact such old, worn and used machinery, to-wit the sum of ten thousand dollars.

These two indictments furnished the basis for the action of the Governor of Illinois, the propriety of which is in question in this cause.

The learned Judge of the District Court in discharging the appellee from arrest based his determination on different grounds as affecting the two indictments.

With respect to the charge of false pretences it was the opinion of the Court that the facts averred in the indictment upon consideration of the contract referred to therein did not constitute a crime.

With respect to the charge of bribery it was the opinion of the Court that no essential ingredient of the crime was shown to have been committed by the respondent while within the State of Michigan, and that, therefore, as to such offense he could not be said to be a fugitive from justice.

It is admitted that Mr. Daily was in the State of Michigan on three occasions while the plans to substitute for the new machinery provided for by the contract the second hand machinery owned by said Daily, were being carried into operation and made effective. On July 22nd, 1907, the Board of Control and the Warden met in Detroit for the purpose of considering the bids, and it was at that time that the bid was presented by Mr. Daily in person and accepted.

A few days prior to that Armstrong and Daily had met in Chicago, at which time Armstrong states that the arrangement was made that he should permit the second hand ma-

chinery to go through and receive a present, (Rec. 325, Ab. 142) and in the meantime, Mr. Daily, as he himself testifies, had communicated to the Hoover and Gamble Company the understanding that the Ayton machinery was to be considered as included in the bid, although he denies the conversation to which Armstrong testifies.

Mr. Daily was again in Michigan on November 14, 1907, (Rec. 318-319, Abs. 139). The purpose of this visit is not clearly established, but the testimony of Armstrong is to the effect that the purpose of Daily's visit at that time was to receive assurances that they would have no trouble from the consulting engineer, a question having been raised by Mr. Eminger with respect thereto, arising out of the word "new" in the contract.

Mr. Daily was again in Michigan after the machinery was in operation and when it was substantially accepted by the Board of Control.

We contend on behalf of the appellant that the presence of Daily in the State of Michigan upon each occasion was in furtherance of a corrupt purpose conceived and entered into by Daily, Armstrong and Eminger to impose upon the People of the State of Michigan, through the corruption and deception of its officers, property which it had not purchased in pretended compliance with a contract for different property, the increased price of which it was the corrupt purpose of the conspiracy to obtain.

Appellant does not rely upon the doctrine of constructive presence of Daily in the demanding state, but upon his personal presence when the offenses charged were committed.

Counsel for appellee relies almost entirely upon and introduced a volume of evidence to prove appellee's contention that he, Daily, was not personally present in Michigan on the 13th day of May, A. D., 1908, the date named in the indictments, and therefore urges that Daily was not a fugitive from justice.

Appellant does not contend that Daily was personally present in Michigan on the 13th day of May, A. D., 1908, but under the authority of the Hyatt case (188 U. S. 691) expressly waived the materiality of that date and offered undisputed evidence that Daily was present in Michigan on other dates upon which constituent acts of the crimes charged were committed. (Rec. 140, Abs. 58.) Daily himself testified that he was personally present in Michigan upon the dates which appellant relies upon. (Rec. 301-305, Abs. 131-133.)

ARGUMENT.

At the hearing before the District Court, from which the pending appeal was taken, we urged that the exercise of the jurisdiction of the Court was improvident because an appeal would lie from the decision previously rendered by the Hon. Willard McEuen, Judge of the Criminal Court of Cook County, to this Court, and that the exercise of jurisdiction by the District Court of the United States was in effect permitting an appeal from the State Court to the said District Court, but in view of the ruling of the Court upon the question, its assumption of jurisdiction, and the delay which has been thereby caused, and the importance to the State of Michigan of a speedy and final determination of the questions involved, we invoke the rule of

Appleyard v. Massachusetts, 203 U. S. 222,

and request the Court to proceed to final judgment upon this appeal.

We conceive the law to be well settled by the repeated decisions of the Court that the questions involved in this record are two.

First, the question of law, whether or not from the proceedings shown in the record it appears that the appellee, Milton

Daily, has been in fact, within the intent and meaning of the law, charged with a crime within the State of Michigan.

Second, whether or not the prima facie effect of the Governor's Warrant, the accompanying papers and the elements embodied in the charge have been overcome by proofs adduced on behalf of the petitioner in the habeas corpus proceeding tending to show that he was not within the meaning of the law a fugitive from the justice of the State of Michigan.

FIRST, WAS THE DEFENDANT CHARGED WITH CRIME IN THE DEMANDING STATE?

Upon this proposition we contend that the case at bar is governed by

Pierce v. Creecy, 210 U. S. 387.

In that case the indictment was examined for the purpose of determining whether or not it constituted such a charge of crime as would make it the basis for the warrant of the Governor ordering the extradition of the defendant named in it. It was there said upon the authority of many cases cited, page 402, that:

"The only safe rule is to abandon entirely the standard to which the indictment must conform, judged as a criminal pleading, and consider only whether it shows satisfactorily that the fugitive has been in fact, however inartificially, charged with crime in the State from which he has fled."

After further discussion the Court applies to the charge pending in that case the language of the statute creating the offense, and conceding for the purpose of argument the correctness of all the assertions of the defendant affecting the character of the pleading, but finding in it substantial aver-

ment of the elements prescribed by the statute, held the indictment good so far as the requirements of the extradition proceedings were concerned.

We can confidently submit the indictments in the case at bar to the same test. Not only is the language of the statute met by the direct averments of the indictments, but from the facts recited the statutory components of the offense are clearly established.

The provisions of the Michigan statute governing indictments specifically provide that after verdict for a statutory offense the indictment shall be held sufficient if it describes the offense in the words of the statute.

Compiled Laws of the State of Michigan, Sec. 11924.

In addition thereto various sections are found providing against the vitiation of indictments by informalities and for their amendment in proper cases.

Compiled Laws Sec. 11918, et seq.

The provisions of the statutes of Michigan defining the crimes involved in this case, namely, bribery and the obtaining of money or other property by false pretenses are as follows:

"Every person who shall corruptly give, offer or promise, to any executive, legislative or judicial officer, after his election or appointment, and either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding which may be then pending, or may by law come or be brought before him in his official capacity, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding three thousand

dollars, and imprisonment in the County jail not more than one year."

Compiled Laws, Section 11311.

"Every person who, with intent to defraud or cheat another, shall designedly by color of any false token or writing, or by any other false pretense, * * * * obtain from any person any money, personal property or valuable thing. * * * * if such money, personal property or valuable thing shall be of the value of twenty-five dollars or less, shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding three months; and if * * * * such money, personal property, valuable thing * * * * shall be of the value of more than twenty-five dollars, such person shall be punished by imprisonment in the state prison not more than ten years or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year."

Compiled Laws, Section 11575.

The learned District Judge determined that the facts set up in the indictment for false pretenses nullified the averments of the existence of an offence considering the terms of the contract, and warranted his finding, that no reliance was placed upon the false pretenses, but that the warranty of the vendor as to the condition of the property sold and the provision for inspection and approval by the consulting engineer of the State, were the moving causes for the reliance of the State. (Rec. 331, 332, Ab. 144, 145.) This is not, we contend, with due deference to the learned Judge, a proper question for determination in this proceeding, and even if it were the finding of the Court below is not in accord with the authorities upon the question of law involved.

We believe it will not be contended that the Court upon application for habeas corpus has any power whatever to apply the facts to the charge with a view to determining the guilt or innocence of the defendant charged. The citation of authorities upon this proposition is unnecessary. Whether or not the fact that the contract contains a warranty has any bearing whatever upon the merits of the charge must be for the Courts of the demanding state to determine. Whether the existence of such a warranty be recited in the indictment or not it is merely evidentiary and might be supplemented, withheld or controverted by the actual evidence adduced at the trial.

The indictment contains several counts in one or more of which the nature of the pretenses used is not averred, nor is such allegation necessary under the laws of the State of Michigan.

People v. Winslow, 39 Mich. 505,

People v. Dyer, 79 Mich. 480.

People v. Butler, 111 Mich. 483.

And upon the trial the counts containing the statements made the basis for the opinion of the learned court below might be entirely abandoned. At all events their color and effect are not for consideration upon the hearing of a habeas corpus petition upon extradition. But the presence of a warranty in a contract would not, as a matter of law, prevent the maker thereof from being guilty of criminal false pretenses relative to the character or attributes of the thing sold.

Jackson v. People, 18 N. E. Rep. 286. (Ill.)

was precisely such a case. There a horse was sold upon representations of quality. It was sought to avoid the criminal character of the representations because of the insertion of the warranty in the contract. The Court says with respect to the claim, commencing on page 288:

"If the rules contended for are to be applied in such case, every person selling property and obtaining money therefor by false pretenses can escape the penalty provided by law, by simply inducing the purchaser to accept a bill of sale in which some warranty may be inserted, and thus, by a show of fairness, be enabled the more effectually to perpetrate the fraud. The instrument prepared for execution beforehand, as was here done, might contain, in the form of warranty, the very representations relied upon by the purchaser, and if the acceptance of such instrument would absolve the defendant from criminal responsibility for pretenses before then made, he would be enabled, by changing the form, but not the substance, of his representations to more effectually carry out his fraudulent purposes. Careful as the law is of the rights of persons, we cannot lend our sanction to the application of the rules where it would be attended with such consequences."

People v. Winslow, 39 Mich. 505.

This was a prosecution for conspiracy to obtain moneys by false pretenses. The pretenses charged were a false showing of business, a false pretense of being about to engage in other business and other fraudulent devices to give color to assurances that a situation could and would be procured for the complainant and because of the fact that the money was obtained through a contract, it was sought to avoid the consequences of the criminal conspiracy. The Court said, page 507:

"Nor can the conspirators escape responsibility for the fraud because they accomplished it by means of a promise. The promise was accompanied by assurances of Winslow's confidence in his ability to procure the

desired situation, which evidently referred to a situation in Parker's proposed business and which the jury must have found were wholly baseless. The promise was therefore accompanied by a false assertion of confidence, as well as by various false and fictitious devices calculated to win confidence in it."

We submit that the language used by the Supreme Court of Michigan in this case applies concretely to the facts in the case at bar. The contract having been averred it is further charged that "Before the making of said contract said Allen N. Armstrong, conspiring with Milton Daily and A. J. Eminger, had corruptly agreed to substitute for the machinery so contracted to be sold to said State of Michigan for said plant as aforesaid certain old, worn and second hand machinery of less value than the machinery so contracted to be sold, the said Board of Control of the State Prison at Jackson being ignorant of such conspiracy and such intended substitution of worn, second hand and used machinery for the new machinery required by said contract to be furnished, and being deceived and defrauded by the said substitution, and the said machinery so contracted for not being furnished as provided by said contract, but in place and stead of a portion thereof said used, second hand and worn machinery having been theretofore delivered and installed."

Testimony is found in the record from Mr. Daily, himself, that this machinery was shipped to Miamisburg, Ohio, the purpose of the Hoover and Gamble Company being to have every machine that went to Jackson just the same; that the Ayton machinery was sent to Miamisburg, Ohio, for the purpose of being repainted, and every new improvement that was put on the machines was put on there at Miamisburg, Ohio, that no man could recognize the machines that came from Ayton, practically every machine being the same. He further says, "I did not recognize the machines as the machines that came from Ayton." (Rec. 309, Tr. 135.)

In view of this testimony the language of the Court below at the foot of page 144 of the Transcript of Record; "Here is all of this machinery. You and your experts are here now on the ground. Look it over. It is all new. On the theory that if it was old and worn the victim and his expert mechanics would discover it the first time, and in a criminal prosecution that phase would exclude the idea of a crime," is apparently impertinent to the real issue even if the Court had power upon this inquiry to pass judgment upon a fact open to controversy, namely, the character and effectiveness of the pretenses used.

We respectfully submit that this disposal by the Court below of the indictment charging false pretenses was error, and that this indictment as well as the one charging bribery should be held sufficient to satisfy the first requirement of our case, that the defendant Daily was in fact charged with crime.

SECOND, HAS THE DEFENDANT PRODUCED EVIDENCE CONTROVERTING THE CHARGE THAT
HE IS A FUGITIVE FROM JUSTICE?

It is contended on behalf of the appellee that he was not within the State of Michigan at a time when it was possible for him to have committed the offence charged, and that he is not, therefore, within the meaning of the law a fugitive from justice.

We contend with reference to both the charges specified in the warrant of Gov. Deneen that the defendant was within the boundaries of the State of Michigan in furtherance of a criminal conspiracy entered into between said defendant and other persons to violate the laws of the State of Michigan by corruptly inducing the Warden of the Michigan State Prison to accept a bribe to influence his official action in a matter legally pending before him for decision and through such

bribe induce him to permit the fraudulent substitution of certain second hand and worn machinery in the place of new machinery in satisfaction of the requirements of a contract in the making and acceptance of which said machinery the said Warden had official authority.

It was clearly contemplated by this conspiracy that a bid should be made by Mr. Daily purporting to be for new machinery, the acceptance of which would result in a contract calling for the supplying of such new machinery, but that in fact the conspiracy involved the substitution of old machinery to the knowledge of the parties to the conspiracy, but with such renewals and changes as would prevent those in ignorance of the plot from observing the substitution.

The defendant Daily tendered the bid in person within the State of Michigan, thus setting in motion the machinery by which the result was ultimately to be accomplished. He again visits Michigan in November, 1907, while the machinery is actually being furnished and the fraudulent substitution being effected through the consent of the Warden induced by the bribe, and the ignorance of innocent agents of the State of Michigan, induced by fraudulent devices by which the character of the substituted machinery was hidden from observation. He again visits Michigan at about the time of the acceptance of the machinery by the officials of the State of Michigan and the allowance of his bill therefor.

We submit that under the authorities applicable to these conditions Daily has not shown his absence from the State at the times when elements of the offense were in progress, and his active participation within the State in all the necessary steps in the consummation of the conspiracy should be held to be affirmatively established by the uncontroverted testimony in the record.

It is for the Courts of Michigan to hold, in the first instance at least, what are the essential elements of the crime of bribery under its statutes. We respectfully submit that it is

not the duty of the Federal Tribunal to prescribe in advance certain elements deemed essential to the completion of the crime, and because of the absence of proof, upon hearing on habeas corpus, of the commission by the appellee of those elements or ingredients, as the learned District Judge calls them, to prevent the Courts of the demanding State from passing their judgment as to what shall be deemed an infraction of the laws of the demanding State in this particular.

The only case which we have been able to find dealing directly with the question which has been before the Court of last resort is

Ex Parte Huffstot, 180 Fed. 240.

We are advised that an appeal taken from the determination of the Court below in this case has been dismissed in this Court.

The facts in that case are not nearly so incriminating in their tendency as those actually admitted by the Record in the case at bar. There, as here, a conspiracy to bribe public officers was the basis of the charge. The Court held that the offence might have been committed without the personal presence of the defendant within the demanding State, but that in such a case, even though indicted, he could not be extradited. The acts averred in the indictment did not tend to fix the presence of the defendant within the demanding State, and evidence taken before the Governor of New York upon the application for extradition was very vague upon the subject. There was testimony, however, on the part of the Assistant District Attorney of Pennsylvania County, in which the indictment was found, that there was circumstantial evidence before the grand jury as to acts by the defendant during the period over which the conspiracy extended. The Court in its opinion says, page 243:

"This evidence is undoubtedly vague; but I think that the substantial effect of it is that, while there was no specific evidence by an eye witness that Huffstot was in Pennsylvania on any particular day on which any act in furtherance of this conspiracy was done, there was circumstantial evidence from which a jury would be justified in drawing the inference that he was there on such a day. Now, if it shall be proved that a conspiracy was entered into by Mr. Hoffstot, and circumstantial evidence shall be offered sufficient to authorize a jury to draw the influence that he was present in Pennsylvania when any act material in carrying out the objects of the conspiracy was done, I think that he would be properly held to have been within the State of Pennsylvania at the time that the crime charged in the indictment was committed, and that his subsequent return from that State to New York would render him a fugitive from justice within the meaning of the United States Constitution and statute upon that subject."

The Court further discussing the averments of the indictment relative to the receipt of money from certain banks on page 244 remarks:

"It may well have happened that Huffstot, at some of his visits to the City of Pittsburg, engaged in the conspiracy to pay this money, or did some act in connection with its collection and payment."

This comment of the Court is clearly applicable to the present case. We are not confined to the testimony adduced as to the acts performed by the appellee while within the State of Michigan, but if the time of his visits were such that the conspiracy was then being carried out by acts with which he might possibly have been connected, the obtaining and

presentation of proofs at his trial showing the incriminating character of his participation would be a possibility which it seems to us is clearly within the qualifying language of,

Hyatt v. Corkran, 188 U. S. 691.

We quote from the opinion of the Court commencing on page 710, as follows:

"In the case before us the New York Court of Appeals held that if upon the return to the writ of habeas corpus it is clearly shown that the relator is not a fugitive from justice, and there is no evidence from which a contrary view can be entertained, the court will discharge the person from imprisonment, but that mere evidence of an alibi, or evidence that the person demanded was not in the State as alleged, would not justify his discharge, where there was some evidence on the other side, as habeas corpus was not the proper proceeding to try the question of the guilt or innocence of the accused. And the court also held that the conceded facts showed the absence of the accused at the time when the crimes, if ever, were committed, and that the demand was in truth based upon the doctrine that a constructive presence of the accused in the demanding State at the time of the alleged commission of the crime was sufficient to authorize the demand for his surrender.

We are of opinion that the warrant of the governor is but *prima facie* sufficient to hold the accused, and that it is open to him to show by admissions, such as are herein produced, or by other conclusive evidence that the charge upon which extradition is demanded assumes the absence of the accused person from the State at the time the crime was, if ever, committed."

We respectfully submit that it is unnecessary at the hearing on habeas corpus to establish the purpose of the defendant, or the nature of his activity, if at any opportune time he was within the demanding State. If his presence within the State is under such circumstances that proof might be offered at the trial as to the criminal character of his acts and the purpose of his visits it is not incumbent to make such proof at the hearing on habeas corpus.

But in the case at bar there is no reason offered for the presence of the defendant Daily within the State of Michigan which does not associate him with the working out of the conspiracy from which the offense as charged resulted.

We cite as additional authorities on the question of fact the following:

In re Cook, 49 Fed. 833.

This case involved a charge of receiving deposits in an insolvent Bank. The accused insisted that because he had conclusively proven that he was not within the State at the time that the deposit was received that he could not be extradited, not being a fugitive from justice. In discussing this contention the following language of Judge Jenkins on page 842 is pertinent to the case at bar:

“In construing the act, regard must be had to the mischief sought to be prevented. The purpose of the law is manifest. The act was designed to prevent fraudulent banking, and to protect the public from dealing with such unsafe or insolvent concerns. The manual receipt of the deposit is but one step, and the final step, in the consummation of the offense. There must precede the unsafe and insolvent condition the representation of safety and solvency, and the knowledge of the unsafe and insolvent condition. These are the essentials of the offense. The receipt of the de-

posit may be by an innocent instrument of a guilty officer of the bank. It is a criminal act to hold out an insolvent bank as safe or solvent, effective to the consummation of crime upon the receipt of the deposit."

Later the Court on page 843 says:

"When the criminal act charged is one as to which it is essential that several acts or facts should concur, and which may occur at different times, if the party charged commits within the State any one of the acts constituting the crime, but departs the State before the happening of other acts contemplated and authorized by him, or upon the happening of events necessarily resulting from his act, can he be deemed a fugitive from justice? We are of opinion that he must be so regarded. The purpose of the constitutional provision was that criminals should find no asylum within any State of the Union; that 'the law might everywhere and in all cases be vindicated.' It will not do to refine too curiously upon such enactments, so that the very design of the law shall prove abortive, so that that shall become a shield and a protection which was designed as a weapon of offense. Can it be that one may not be regarded a fugitive from justice who within a state hires another to kill and murder, but before the killing departs the jurisdiction to avoid the consequences of the murder he has designed? Can it be that, if one within a state makes false representations to procure the goods of another, and departs the state before that other actually parts with his property on the faith of these representations, he may not be deemed a fugitive from justice?"

Re William Sultan, 115 N. C. 57.

This case involved the correctness of an order of the Su-

perior Court releasing from custody in a habeas corpus proceeding one for whom the Governor had issued a warrant for the purpose of returning him to the Governor of Pennsylvania as a fugitive from justice. He was charged with having obtained goods by false and fraudulent pretenses. The date in the indictment was given as the 17th day of September, 1892, which was the date of the alleged false representations. The goods were in fact delivered to a common carrier on October 6th, consigned to the petitioner at Newburn in the state of North Carolina. After a discussion of the law and the citation of authorities including quotations from the case previously cited by us the Court held him to be a fugitive from justice even though the crime had not been completed within the state of Pennsylvania.

Hayes v. Palmer, 21 App. Cases, D. C., 450.

We quote from the opinion of the court in this case commencing on page 460, as follows:

"It remains to apply the doctrine enounced to the special facts of the case at bar. There is neither concession nor proof that the demand for the arrest and removal of the appellant to the State of Maryland, as a fugitive from justice there, was founded on his constructive presence, merely, at the time of the commission of the crime charged."

Also commencing on page 461, as follows:

"We think it was his duty to meet the *prima facie* case of the State by proof showing with precision of statement the date of his departure from Maryland. Had he done so, it would have devolved upon the State to show that he was a fugitive from justice by producing evidence that he was in the State at the time charged in the indictment, or to prove that said date

had been erroneously charged and could be carried back to the necessary time. Until the discharge of the burden imposed upon him by the *prima facie* case of the State, through the presentation of a distinctly traversable issue, the latter ought not to be called upon to reply."

Again on page 462, as follows:

"For example, suppose the case of a party indicted for a secret murder that had been brought to light, long after its commission, by the discovery of the partly decomposed body, or the skeleton of the murdered person; the evidence being entirely circumstantial, and the date of the commission of the crime a matter of conjecture on the part of the grand jury. The accused, having been arrested in another State as a fugitive from justice, testifies that he was not in the demanding State on the day alleged, but had been there shortly before, and frequently during the same summer, failing, however, to fix the latter dates at all. Would this evidence be sufficient to impose upon the demanding State the burden of introducing witnesses to prove the various circumstances from which it might reasonably be inferred that the murder had occurred shortly before the date alleged in the indictment? We think not."

In re Palmer, 138 Mich. 36.

This case in the Courts of the demanding State recognizes the rule we contend for, the Court on page 37 saying:

"Clearly, we may not, in the exercise of this restricted power, enter upon a trial of the alleged offender. This would put upon the demanding State

a burden of two trials—the one at a place removed from the place where the alleged offense was committed.”

With respect to the presence of the petitioner in the demanding State, the principle which we contend for here is abundantly recognized by the Court in the following language on page 38:

“The affidavits disclose that the petitioner was present at Cleveland at a date shortly before that laid in the indictment, but not at that date or since. From this it is argued that he could not have fled from Ohio after committing the offense. The time laid in the indictment is not ordinarily so vital as to exclude proof of the offense at an earlier date.”

Many cases might be cited from this Court showing its disinclination to interfere with the proceedings of the Executives in matters of this kind, but it would seem to be entirely unnecessary to call the attention of the Court to its repeated utterances along these lines. We content ourselves with referring the Court to one of the latest decisions touching this matter.

Compton v. Ala. 214 U. S. 1.

There the Court on page 8 says:

“When it appears, as it does here, that the affidavit in question was regarded by the executive authority of the respective States concerned as a sufficient basis, in law, for their acting—the one in making a requisition, the other in issuing a warrant for the arrest of the alleged fugitive—the judiciary should not interfere, on habeas corpus, and discharge the accused, upon technical grounds, and unless it be clear that what was done was in plain contravention of the law.”

We submit that in the case at bar the record clearly shows that Milton Daily was duly charged with crimes by indictments of a grand jury within the State of Michigan, and that he was found within the State of Illinois after the commission of such crimes, having been present within the demanding state at times when it was not only possible but certain that steps in furtherance of a criminal conspiracy were taken, and that such criminal conspiracy involved consequences affecting in the most important degree the sovereignty of the State of Michigan, and that only abstruse technicalities are being or can be asserted against the validity of the proceedings for his extradition and return to the State of Michigan for trial.

Under these circumstances we respectfully urge that the order of the Court below should be reversed and the appellee remanded to the custody of the agent of the State of Michigan in accordance with the warrant of the Governor of the State of Illinois.

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Office Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1910.

No. 638.

CHRISTOPHER STRASSHEIM, Sheriff of Cook
County, Illinois,
Appellant,

vs.

MILTON DAILY,
Appellee.

Appeal from the District Court of the United States for the
Northern District of Illinois, Eastern Division.

BRIEF FOR MILTON DAILY, APPELLEE.

WILLIAM S. FORREST,

Counsel for Appellee.

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BRIEF FOR MILTON DAILY, APPELLEE.

STATEMENT OF THE CASE.

There is set forth in this brief for the appellee a statement of the case, because the statement of facts presented in the brief for appellant is, it is submitted, incomplete and, in some respects, inaccurate, especially as to matters in evidence, which counsel for appellant contend are controlling and decisive of all the issues raised on the record.

1. *The proceedings in the District Court prior to the filing therein of the amended answer of Milton Daily to the return of Christopher Strassheim Sheriff, etc., to the writ of habeas corpus.*

On June 23, 1909, Milton Daily, the appellee, filed in the United States District Court for the Northern District of Illinois, Eastern Division, his petition for the writ of *habeas corpus*, in which he complained and showed, what was thereafter more fully and particularly set forth in the amended answer. An abstract of the amended answer is hereinafter stated.

The petition concluded with a prayer in the usual form for the issuance of the writ of *habeas corpus*, to be directed to said Christopher Strassheim, sheriff, etc., and was supported by the affidavit of Milton Daily.

In compliance with the prayer of the petition the writ of *habeas corpus* issued out of the District Court on June 23, 1909,—the same day on which the petition was filed.

On the afternoon of the same day Christopher Strassheim, sheriff, etc., appellant, to whom the writ was addressed, filed his return thereto in the District Court. The return was, in substance, that he, Christopher Strassheim, Sheriff of Cook County, Illinois, produced before the court the body of Milton Daily in obedience to the writ of *habeas corpus* and that Milton Daily was held in his custody, as such sheriff, under and by virtue of a certain Governor's warrant, which was issued May 21, 1909, by the Hon. Charles S. Deneen, Governor of the

State of Illinois, directing him as such sheriff to secure Milton Daily and deliver him into the custody of Jacob F. Strobel, the agent of the executive authority of the State of Michigan, as by reference to said Governor's warrant, a copy of which was thereto annexed, will more fully and completely appear.

There is a clerical error in the extradition warrant in this: It is recited therein that the executive authority of the State of Michigan has produced before the Governor of the State of Illinois "a *copy* of an indictment," etc. The fact is that the Governor of Michigan produced before the Governor of Illinois a copy of an indictment for bribery and also a copy of an indictment for obtaining money by false pretences. See the requisition. (Trans. Rec., 31.)

After the return of the sheriff was filed in the District Court, Daily was admitted to bail pending the disposition of the proceedings in that court.

On June 24, 1909, it was agreed and stipulated by and between the parties that the petition for the writ of *habeas corpus* "shall for all purposes by both of said parties be taken as the answer of the said Milton Daily to the return in the above entitled case of said Christopher Strassheim, sheriff," etc. (Trans. Rec. 26.)

On June 28, 1909, in the District Court, a demurrer by Strassheim was filed to the answer to the return. Thereupon followed argument by counsel for the respective parties upon the demurrer, which the court took time to consider.

On July 20, 1909, the demurrer was overruled. In the opinion overruling the demurrer, the District

Court held that the matters and things averred in the indictment for obtaining the \$10,000 in money by false pretences, referred to in the extradition warrant and set forth *in haec verba* in the petition, did not constitute a crime against the laws of the State of Michigan, and that Milton Daily, the petitioner, did not stand charged by virtue of said indictment with the commission of any crime against the laws of the State of Michigan. (Trans. Rec. 149, 28.)

Upon the overruling of the demurrer counsel for Strassheim moved for leave to file certain affidavits. On October 8, 1909, the question of the admissibility of said affidavits was set down for hearing on October 14, 1909. No further mention is made in the transcript of the record concerning said affidavits.

On October 16, 1909, Daily filed in the District Court his amended answer to the return of Strassheim, sheriff, to the writ of *habeas corpus*. (Trans. Rec. 29-56.)

The relevancy of the matters and things, averred in the amended answer, will be at once apparent, if they are read in the light of the history of the transactions upon which are founded the indictments against Daily for bribery and for obtaining the \$10,000 by false pretences. For this reason the history of those transactions is herein set out before the contents of the amended answer are stated.

2. *The transactions upon which are founded the accusations against Daily of bribery and obtaining \$10,000 by false pretences, and the persons who participated in those transactions, as shown by the evidence, given at the habeas corpus hearing.*

From February, 1906, until February, 1909, Allen N. Armstrong, hereinafter called Armstrong, was warden of the Michigan State Prison in Jackson, Jackson County, Michigan, and Thomas J. Navin, Timothy C. Quinn and George W. Merriam constituted the Board of Control of that prison, and C. D. Wrentmore was consulting engineer to said Board of Control.

The Hoover & Gamble Company, of Miamisburg, Ohio, was engaged in the business of manufacturing machinery, including machinery for the making of twine and cordage. Andrew J. Eminger was secretary, and Milton Daily, the appellee, hereinafter called Daily, was its sales agent.

Daily's office was at 115 Dearborn street, and his residence at 1624 Kenmore avenue, in Chicago, Illinois. Daily was also the agent for Avelino Montes Sen C. Merida Mexico, dealers in sisal-hemp, which is used in the manufacture of twine and cordage.

Daily made Armstrong's acquaintance at Jackson, Michigan, not later than February, 1907, to which place Daily went to get information about the project to install a binder twine plant in Michigan State Prison.

On June 24, 1907, an act of the legislature of Michigan went into effect which, among other things, empowered, authorized and directed the warden (Arm-

strong) and the Board of Control of the Michigan State Prison at Jackson, Michigan, to purchase, erect, equip and maintain in that prison such buildings, boilers and equipment as were necessary for the manufacture of twine and cordage, together with a warehouse to be used in connection with the twine and cordage plant.

Pursuant to that act of the legislature the Board of Control called for bids for the equipment of a 120 spinner plant for the manufacture of twine and cordage at that prison, together with the necessary preparing machines. Bids were duly made by the Watson Manufacturing Company of Paterson, New Jersey, and also by the Hoover & Gamble Company, the latter making its bids in the name of its agent Daily, the appellee. Daily, as the sales agent for the Hoover & Gamble Company, made two bids. The first bid was to furnish all new machinery, to be manufactured by Hoover & Gamble Company, for \$29,805, or part new and part used machinery, to be manufactured by the same company, for \$28,015, and was made to the Board of Control by Daily in a letter written and mailed by him in Chicago, Illinois. (Trans. Rec., 131, 132.)

The "part used machinery" (called in the record the Ayton machinery), referred to in that bid, was machinery which had been manufactured by the Hoover & Gamble Company and had been set up at Ayton, Canada. Some of the "part used machinery" had been in use at Ayton, Canada, for a short time, not to exceed 45 days, and some of the "part used machinery" had not been used at all. It was all "manufactured by the Hoover & Gamble Com-

pany" (Trans. Rec., 140), and therefore was such machinery as was provided for in the contract. (Trans. Rec., 76, 77.) It was purchased by Daily in January, 1907. After the contract was signed the Ayton machinery was shipped from Ayton, Canada, to the works of Hoover & Gamble Company at Miamisburg, Ohio, where it was repainted. It could not be distinguished from machinery which had never been set up or used. The Ayton machines could be distinguished from the new machines installed in the prison plant at Jackson, Michigan, only by the numbers thereon (which fact is conclusive evidence that it was "free from any defects of materials" and was not "worn"). No part of the Ayton machinery was worn. (Trans. Rec., 134, 135.) The Board of Control declined to accept the first bid, which included the Ayton machinery, for a sentimental reason only, that is, "because they were afraid the International Harvester Company would use it against them; that the International Harvester Company would say that the State of Michigan had bought old machinery, and that the State of Michigan could not afford that." (Trans. Rec., 134.)

The Ayton machines, and in fact all the machines installed in the prison plant at Jackson, Michigan, by the Hoover & Gamble Company, were in actual use at the prison from some time in March, 1908, that is, about fourteen months before the return of either of the indictments, annexed to the requisition. The plant at Ayton was a 60-spinner plant. The plant at the prison in Jackson, Michigan, was a 120-spinner plant.

The first bid made by Daily was rejected, and

thereupon new bids were requested for *all new machinery*. The rejection of Daily's first bid and the request for new bids for all new machinery were made known by Armstrong to Daily at Daily's office in Chicago, Illinois, just before Daily made his second bid for all new machinery, which second bid was made in the form of a letter written, dated and mailed in Chicago, Illinois, July 19, 1907. (Trans. Rec., 131, 132, 134, 142.)

Before the rejection of Daily's first bid, the "part used machinery," that is, the Ayton machinery, was discussed by Daily, Armstrong, the several members of the Board of Control, the Governor of Michigan, and other persons, in several conversations, held in Michigan, Indiana and Illinois. (Trans. Rec., 131.)

The second bid was accepted on July 22, 1907, in Detroit, Michigan, by the Board of Control, all the members of the Board, the Governor of Michigan, Armstrong, Daily and Wrentmore, the consulting engineer of the Board of Control, being present. (Trans. Rec., 132.)

And thereupon a contract was drawn up and executed in August, 1907, as of July 22, 1907, and the second bid of Daily was, by reference thereto, made a part of the contract. The contract was signed in Michigan, by the members of the Board of Control, and at Miamisburg, Ohio, by the Hoover & Gamble Company, by its secretary and treasurer, Andrew J. Eminger. (Trans. Rec., 135.)

The Elsie Mills, whose name is appended to the contract as a witness, was, in July and August, 1907, an employe of the Hoover & Gamble Company at its office in Miamisburg, Ohio.

The contract and the second bid are set forth *verbatim* in the indictment against Daily for bribery. (Trans. Rec., 76.)

After Daily's second bid, as agent for the Hoover & Gamble Company, was accepted on July 22, 1907, at Detroit, Michigan, Daily immediately returned to Chicago and was not again in Michigan until November 14, 1907, on which day he went to Jackson, Michigan, at the request of Armstrong, and met Armstrong at the prison, for the purpose of determining what could be done to relieve the congested condition of the warehouse on the prison premises. Daily relieved that congested condition of the warehouse by temporarily stopping the further shipment of machinery to the prison by the Hoover & Gamble Company from Miamisburg, Ohio, and by ordering to be stored at Mobile, Alabama, a thousand bales of sisal-hemp, then in a ship on the Gulf of Mexico, and on the way to said prison. The building in which the machinery for the twine and cordage plant was to be installed by the Hoover & Gamble Company, it appears, had not been finished at this time, and pending the finishing of that building, Armstrong had been storing in the warehouse on the prison premises such machinery as had already been delivered by the Hoover & Gamble Company and about 3,000 bales of sisal hemp, all purchased by the Board of Control and received at the prison, to be converted into binder twine.

After November 14, 1907, Daily was not in Michigan until April 6, 1908, on which day he left Chicago in the morning and arrived in Jackson in the evening, and remained in Jackson until the after-

noon of April 7, 1908, at which time he returned to Chicago.

Daily's purpose in going to Jackson on April 6, 1908, was to meet Eminger there and with Eminger to look over the machinery and plant, which at that time had already been installed and was in actual operation. (Trans. Rec., 126, 136-137.)

On the evening of April 6, 1908, Daily met Eminger in Jackson and spent the evening there with him at a hotel. The next morning Daily went out to the prison, and at the prison met Armstrong, the Governor of Michigan, certain members of the Board of Control and Wrentmore, the Consulting Engineer of the Board of Control. Daily and Eminger remained in and about the prison plant until about eleven o'clock in the morning. The Governor, Wrentmore, Armstrong, Daily and Eminger walked through the prison "by ones and twos" and examined the machinery. (Trans. Rec., 137.)

The machinery sold by the Hoover & Gamble Company to the Board of Control, commenced operations about March 17, 1908. Armstrong's affidavit, (Trans. Rec., 87.)

Subsequent to November 14, 1907, Daily and Armstrong did not meet until April 7, 1908. (Trans. Rec., 143.)

Daily has not at any time been anywhere in Michigan since April 7, 1908. (Trans. Rec., 126.)

3. *The amended answer of Daily to the return of Strassheim, Sheriff, to the writ of habeas corpus.* (Trans. Rec., 30.) *The proceedings subsequent to the filing of the amended answer.* (Trans. Rec., 57-66.)

The amended answer of Daily denies that the indictments, annexed to the requisition and referred to in the extradition warrant, charge Daily with having committed against the laws of Michigan either the crime of bribery or the crime of obtaining \$10,000 by false pretences, or any other crime. It then avers that the extradition warrant was granted and issued solely and exclusively upon, because of and in pursuance of, the requisition of and from the Governor of the State of Michigan and certain papers which accompanied and were annexed to the requisition, and not because or on account of any fact, matter, thing or evidence, not stated in the requisition or in the papers, which accompanied and were annexed thereto, and that he, Daily, had read and knew the contents of the requisition and of all said papers. (Trans. Rec., 30-31.)

The amended answer next sets forth *verbatim* all of said papers. In the amended answer, as well as in the petition for the writ of *habeas corpus*, the indictment for bribery was marked "Indictment Exhibit A," and the indictment for obtaining the \$10,000 by false pretences was marked "Indictment Exhibit B," and the two indictments are mentioned and referred to in the petition and amended answer as "Indictment Exhibit A" and "Indictment Exhibit B." (Trans. Rec., 31-52.)

In each of the four counts of the indictment for

bribery it is alleged that the bribe was *given* (and not that it was given, *offered and promised*) to Armstrong by Daily in the City of Jackson, in the County of Jackson, in the State of Michigan on the *13th day of May, 1908*. (Trans. Rec., 34-43.)

In each of the three counts for obtaining the \$10,000 in money by false pretences it is alleged that the false pretences were made, and that the \$10,000 were obtained, in the City of Jackson, in the County of Jackson, in the State of Michigan on the *1st day of May, 1908*. (Trans. Rec., 44-47.)

After setting forth all the papers annexed to the requisition the amended answer of Daily proceeds, as follows (Trans. Rec., 52):

“And said Milton Daily in further answering said return states, that said requisition and said papers which accompanied and were annexed to said requisition do not contain any evidence whatever, competent or incompetent, which tends to prove that he, said Milton Daily, was corporeally within the State of Michigan at the time when it is averred in ‘Indictment Exhibit A’ that said alleged crime of bribery was committed, or at the time when it is stated in said affidavit of said Allen N. Armstrong that said Milton Daily (meaning the plaintiff in this *habeas corpus* proceeding) gave said Allen N. Armstrong the sum of fifteen hundred dollars, or at the time when, if ever, said alleged crime of bribery was committed, or at the time when it is averred in ‘Indictment Exhibit B’ that said alleged crime of obtaining ten thousand dollars in money by false pretences was committed, or at the time when it is averred in ‘Indictment Exhibit B’ that the alleged false pretences stated in ‘Indictment Exhibit B’ were made, or at the time when, if ever, said alleged crime of obtaining ten thousand dollars in money by false pre-

tences was committed, or at the time when, if ever, said alleged false pretences were made. (Trans. Rec., 53.)

“And said Milton Daily in further answering said return states that he, said Milton Daily, was not in the State of Michigan on the first day of May in the year 1908 or on any day on or about said first day of May in the year 1908, or on the thirteenth day of May in the year 1908 or on any day on or about said thirteenth day of May in the year 1908.

“And said Milton Daily further answering said return states that he, said Milton Daily, was in the State of Michigan on two or three different days in the year 1907 prior to the twenty-fourth day of June in the year 1907 (on which said twenty-fourth day of June in the year 1907 it is alleged in ‘Indictment Exhibit A’ and in ‘Indictment Exhibit B’ that a certain Act numbered 211 of the Public Acts of the State of Michigan took effect and became a law of the State of Michigan) and also on the twenty-second day of July in the year 1907 and on the fourteenth day of November in the year 1907, and also on the sixth and seventh days of April in the year 1908; that he, said Milton Daily, was not in the State of Michigan on any day in the year 1907 or on any day in the year 1908 except on said two or three different days prior to the said twenty-fourth day of June in the year 1907 and except on said twenty-second day of July in the year 1907 and on said fourteenth day of November, in the year 1907, and except on said sixth and seventh days of April in the year 1908, and that he, said Milton Daily, has not been in the State of Michigan on any day in the year 1909. (Trans. Rec., 53.)

“And said Milton Daily in further answering said return states that he, said Milton Daily, was not in the State of Michigan at the time

when, if ever, said alleged crime of bribery was committed, or at the time when, if ever, said alleged crime of obtaining ten thousand dollars in money by false pretences was committed, or at the time when, if ever, said sum of fifteen hundred dollars was given to said Allen N. Armstrong, or at the time when, if ever, the alleged false pretences specified in 'Indictment Exhibit B' were made, or at the time when, if ever, said sum of ten thousand dollars was obtained from the People of the State of Michigan, or at the time when, if ever, any one or more of the alleged corrupt agreements or understandings stated in 'Indictment Exhibit A' or in 'Indictment Exhibit B' or in said affidavit of said Allen N. Armstrong were entered into or made, or at the time or times when, if ever, anything was said or done in furtherance of or concerning any of said alleged corrupt agreements or understandings, or at the time when, if ever, said Milton Daily (meaning the plaintiff in this *habeas corpus* proceeding) as it is stated in Allen N. Armstrong's affidavit 'informed this deponent' (meaning said Allen N. Armstrong) 'that he' (meaning said Allen N. Armstrong) 'and the Board of Control of the Michigan State Prison at Jackson were making a mistake in purchasing all new materials as the Ayton machinery owned by said Milton Daily' (meaning the plaintiff in this *habeas corpus* proceeding) 'was practically as good as new and that if this deponent' (meaning said Allen N. Armstrong) 'would permit said Milton Daily' (meaning the plaintiff in this *habeas corpus* proceeding) 'to substitute said Ayton machinery for an equal amount of new machinery in the event a contract was made for the purchase of new machinery for the manufacture of twine and cordage at said prison he, the said Milton Daily' (meaning the plaintiff in this *habeas corpus* proceeding) 'would make this deponent' (mean-

ing said Allen N. Armstrong) 'a present of at least one thousand dollars and possibly more.' (Trans. Rec., 54.)

"And the said Milton Daily in further answering said return states, that the facts and matters alleged in said 'Indictment Exhibit A' do not constitute the crime of bribery or any other crime under the laws of the State of Michigan, and that the facts and matters alleged in 'Indictment Exhibit B' do not constitute the crime of obtaining money by false pretences or any other crime under the laws of the State of Michigan.

* * * * *

"And said Milton Daily in further answering said return, states that the Governor of the State of Illinois did not have the jurisdiction and power to issue said extradition warrant, and that said extradition warrant is void and without authority of law, and that the custody, detention and restraint of said Milton Daily by said Christopher Strassheim, said sheriff, under and by virtue of said extradition warrant, is in violation of the Constitution and laws of the United States and of the State of Illinois because of the facts, matters and things hereinbefore stated, and more particularly for the following reasons (Trans. Rec., 55):

"(a) Because the facts and matters alleged in 'Indictment Exhibit A' do not constitute the crime of bribery or any other crime under the laws of the State of Michigan.

"(b) Because the facts and matters alleged in 'Indictment Exhibit B' do not constitute the crime of obtaining money by false pretences or any other crime under the laws of the State of Michigan.

"(b-1) Because it does not appear from the papers which accompanied and were annexed to said requisition that he, said Milton Daily, stands charged in the State of Michigan with

the commission of any crime under the laws of the State of Michigan.

“(c) Because it does not appear from what is stated in said requisition and in the said papers which accompanied and were annexed to said requisition that he, said Milton Daily, was corporeally within the State of Michigan on the day on which it was averred in ‘Indictment Exhibit A’ that said alleged crime of bribery was committed, or on any day on which it is averred in ‘Indictment Exhibit B’ that the said alleged crime of obtaining ten thousand dollars in money by false pretences was committed, or on the day on which it is averred in ‘Indictment Exhibit B’ that said alleged false pretences stated in ‘Indictment Exhibit B’ were made, or on the day on which it is stated in said affidavit of said Allen N. Armstrong that Milton Daily (meaning the plaintiff in the *habeas corpus* proceeding) gave said Allen N. Armstrong the sum of fifteen hundred dollars.

“(d) Because it does not appear from what is stated in said requisition and in said papers which accompanied and were annexed to said requisition that he, said Milton Daily, was a fugitive from the justice of the State of Michigan within the meaning of the Constitution and laws of the United States.

“(e) Because it appears from all the facts and matters hereinbefore stated and alleged that he, said Milton Daily was not, at the time of the issuance of said extradition warrant, and is not now, a fugitive from the justice of the State of Michigan within the meaning of the Constitution and laws of the United States.

“And said Milton Daily in further answering said return states, that the imprisonment and detention complained of by him, said Milton Daily, in the petition for said writ of *habeas corpus* was solely by virtue of said extradition warrant issued by the Governor of the State of

Illinois upon and in pursuance of the said requisition of and from the Governor of the State of Michigan. (Trans. Rec., 56.)

“All of which said matters and things in this answer contained the said Milton Daily is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and prays to be hence dismissed and discharged without further day.

MILTON DAILY.

Appended to the amended answer is an affidavit of Milton Daily, in the usual form.

The hearing of evidence by the District Court in support of the amended answer of Daily to the return of Christopher Strassheim, sheriff, and in support of said return began October 25, 1909, and ended October 26, 1909. Thereupon the cause was continued from time to time until November 10, 1909, on which day was entered the final order of the District Court, discharging Daily from the custody of said sheriff, under and by virtue of the said extradition warrant. (Trans. Rec., 56-58.)

On November 10, 1909, this appeal was allowed and Daily was admitted to bail, pending the appeal. (Trans. Rec., 60-65.)

By stipulation the time to prepare and file the bill of exceptions was continued from time to time until March 1, 1910, on which day it was filed.

4. *Evidence was offered by Daily at the hearing in the District Court on the writ of habeas corpus to prove that Daily is not a fugitive from the State of Michigan, that is to say, to prove:*

1. That Daily does not stand charged in Michigan with the commission of the crime of obtaining

\$10,000 from the people of the State of Michigan by false pretences.

2. That Daily was not corporeally in Michigan on May 1, 1908, or any other day when, if ever, said crime was committed, assuming that Daily is charged in Michigan with the commission of such crime.

3. That Daily was not corporeally in Michigan on May 13, 1908, or on any other day when, if ever, the crime of giving \$1,500 to Armstrong as a bribe was committed.

All the matters stated and implied in the last three foregoing propositions, marked above 1, 2 and 3, were clearly and conclusively established at the hearing in the District Court by evidence offered thereon in behalf of Daily. Said evidence consisted of a certified copy of the requisition of and from the Governor of the State of Michigan, and of all the papers annexed thereto, together with the testimony of Daily and other witnesses. The testimony of Daily was confirmed in all respects, it is insisted, by the testimony of Armstrong, who was called as a witness on behalf of the appellant, Strassheim.

The requisition and the papers annexed thereto will be found in the bill of exceptions on pages 68-89 of the Transcript of Record.

The testimony of Daily will be found in the bill of exceptions on pages 125-141 of the Transcript of Record.

The testimony of Armstrong, who was cross-examined by the judge presiding in the District Court, but not by counsel for the appellee, will be found on pages 141-144 of the Transcript of Record.

A more particular statement of so much of said

evidence and testimony as seems to be relevant is as follows:

(a.) The indictment for obtaining \$10,000 by false pretences. In each count of this indictment it is alleged that Armstrong, Daily and Eminger, on May 1, 1908, in Jackson, Jackson County, Michigan, did falsely pretend certain matters (*the person or body, if to any person or body, to whom, or to which they did so pretend, not being mentioned*) and did thereby on said May 1, 1908, obtain \$10,000 from the State of Michigan. The substance of the alleged false pretence is that the machinery installed in the prison at Jackson, Michigan, by the Hoover & Gamble Company, was new and unused and complied with the terms of the contract between the Board of Control and said Company, whereas said machinery was not new but was second hand, used and worn and did not comply with the terms of the contract. How old said machinery was, or to what extent it was second hand, or had been used and worn or in what particular it did not comply with the requirements of the contract, is not averred. (Trans. Rec., 82-84.)

(b.) The indictment for bribery. The material averment in each count of this indictment is that Daily, on May 13, 1908, in Jackson, Jackson County, Michigan, *did give* to Armstrong, the warden of the Michigan state prison in said county, the sum of \$1,500 as a bribe with intent to influence said Armstrong's conduct as such warden. In no count of the indictment for bribery is it alleged that Daily promised or offered a bribe to Armstrong.

(c.) The contract between the Board of Control and the Hoover & Gamble Company. In every count

of the indictment for obtaining the \$10,000 in money by false pretences a portion of the substance of the contract between the Board of Control and the Hoover & Gamble Company is averred and counted upon. In the first, second and third counts of the indictment for bribery the substance of said contract is averred and counted upon. In the fourth count of the indictment for bribery said contract is counted upon and is set forth *verbatim*. The fourth and sixth articles of the contract, as set forth in the fourth count of the indictment for bribery, are respectively as follows:

“FOURTH.

“It is further mutually agreed by and between the parties hereto that the said party of the second part *guarantees* the machinery above mentioned to be a complete plant for the manufacture of binder twine and capable of producing 9,600 lbs. of merchantable twine in a working day of eight hours with a sufficient force of operatives. Also that the said party of the second part *guarantees* that all the machinery above mentioned shall be constructed in a thorough manner free from any defects of materials or workmanship and finished in a first-class manner, also that it shall be of the latest approved patterns.”

* * * * *

“SIXTH.

“It is further mutually agreed by and between the parties hereto that in consideration of the performance by the party of the second part of the covenants and agreements herein contained the party of the first part shall pay to the party of the second part the sum of twenty-nine thousand six hundred and eighty dollars (\$29,680.00) as follows: Full payment shall be made upon receipt of each bill of lading for the

machinery shown on such bill until 75% of the total amount shall have been paid. The remaining 25% shall then be retained until the machinery is all installed and tested, and operating, so as to fulfill the *guarantees* above given, to the satisfaction and approval of C. G. Wrentmore, Cons. Engr. of the Board of Control." (Trans. Rec., 78.)

The contract price was \$29,680. The price stated in the bid for that contract was \$29,105. The reason for this difference in the price is the requirement in the contract of a greater number of machines than were offered to be furnished in the bid.

Said contract, it should be remembered, is incorporated *verbatim* into the indictment for bribery and is, in general terms, incorporated into the indictment for obtaining the \$10,000 by false pretences and is counted upon in both indictments and was received in evidence, because it was so embodied in both indictments. It was not offered in evidence, *aliunde* the requisition and the papers annexed thereto, in order to disprove any matter, alleged and certified therein. On the other hand, that contract is an essential part of the papers, annexed to the requisition.

The only failure of performance on the part of the Hoover & Gamble Company, alleged in the indictments or disclosed by the evidence, annexed to the requisition or given upon the hearing on the writ of *habeas corpus*, is the failure to furnish *all new machinery*. It is conceded by the averments in the indictments for bribery and for obtaining the \$10,000 by false pretences and by the evidence disclosed in the extradition and *habeas corpus* proceedings,

that all the promises and guarantees and provisions of the contract, except that all the machinery furnished and installed was not *new*, have been literally fulfilled by the Hoover & Gamble Company; that is, that all the machinery specified in the contract was furnished and installed and delivered f. o. b. cars at Miamisburg, Ohio, on or about the 22d day of January, 1908; that the Hoover & Gamble Company furnished a competent man to superintend the installation and erection of the machinery and to put the same in operation in a perfect and satisfactory manner; that the "machinery above mentioned" is "a complete plant for the manufacture of binder twine and capable of producing 9,600 pounds of mercantile" (meaning merchantable) "binder twine in a working day of eight hours with a sufficient force of operatives"; that "the machinery above mentioned" has been "constructed in a thorough manner *free from any defects of materials or workmanship* and finished in a first-class manner," and that the machinery above mentioned is of the "latest approved patterns"; and that "the machinery above mentioned" has been "tested, and operating, so as to fulfill the *guaranties* above given to the satisfaction and approval of C. G. Wrentmore, Cons. Engr. of the Board of Control."

d. The affidavit of Armstrong annexed to the requisition. The substance of this affidavit is as follows: Armstrong was warden of the State prison at Jackson, Michigan, from the first day of February, 1906, until the first day of February, 1909. The legislature of the State of Michigan in 1907 passed an act authorizing and directing the warden

and the Board of Control of the State prison at Jackson to use, purchase, erect, equip and maintain buildings, machinery, boilers and equipment necessary for the manufacture of twine and cordage together with a warehouse to be used in connection with said twine and cordage plant. This act went into effect on June 24, 1907. Pursuant to that act the warden and Board of Control called for and received bids for the equipment if a 120 spinner plant for the manufacture of twine and cordage at said prison together with the necessary preparing machines and bids were made by the Watson Manufacturing Company and the Hoover & Gamble Company, the latter through "*its sales agent Milton Daily, of Chicago, Illinois.*" The Hoover & Gamble Company's bid for all new machinery was \$29,805, and for part new and part used machinery \$28,015. Prior to July 22, Daily appeared before the warden and the Board of Control at various meetings held for the purpose of considering the purchase of such machinery at Jackson and Detroit, in the State of Michigan. Finally the warden and Board of Control determined to purchase all new machinery, and "*said Milton Daily, as sales agent for the said Hoover & Gamble Company, was requested to make a new bid for all new machinery, which he did under date of July 19, 1907, as is set forth in the certified copy of the indictment hereto attached.*" "*Said bid of the said Milton Daily under date of July 19, 1907, was duly accepted by the warden and Board of Control of said prison, with the addition of one drawing frame at \$550, and one bell ringer at \$25, making a total contract price the sum of \$29,680,*

and under date of July 22, 1907, the contract was duly entered into between the Board of Control of the Michigan State Prison and Hoover & Gamble Company for the purchase of such new machinery, *in the manner set forth in the certified copy of the indictment hereto attached.*"

He, Armstrong, learned from Daily that some three or four years prior to the making of said contract, Hoover & Gamble Company, through Daily as its agent, had installed at Ayton, Canada, a 60-spinner plant for the manufacture of twine and cordage; that said plant had been operated for only about 45 days, which machinery Daily had recently acquired by purchase. A few days prior to the acceptance of said bid of Daily, as above set forth, Daily informed (*place where not stated*) Armstrong that he and the Board of Control were making a mistake in purchasing all new machinery as the Ayton machinery owned by Daily was practically as good as new and that if Armstrong would permit Daily to substitute the Ayton machinery for an equal amount of new machinery, in the event a contract was made for the purchase of new machinery for the manufacture of twine and cordage at said prison he, Daily, would make Armstrong a present of at least \$1,000 and possibly more. (Whether Armstrong told Daily in reply that he would accept the present or when, if ever, he said that to Daily, is not stated.)

After said contract was made Daily did substitute said second-hand machinery (*the time when, not stated*) for a like quantity of new machinery, and appeared at various times at the City of Jackson,

while the same was being installed and after it was installed. It was understood and agreed (*the time when, not stated*) between Armstrong and Daily that Armstrong was to refrain from communicating to the proper officers of the State of Michigan or to the Board of Control the fact of such substitution and to permit the Hoover & Gamble Company and Daily to retain the purchase price therefor.

The plant for the manufacture of twine and cordage commenced operations about March 17, 1908, "and the contract price paid (*place where not stated*) in full to said Hoover & Gamble Company." "Thereafter and on or about the 13th day of May, 1908, the said Milton Daily, as he had prior thereto agreed (*place where not stated*) to do, paid (*place where not stated*) this deponent the sum of fifteen hundred dollars."

Said affidavit of Armstrong lacks a statement of the place where the promise of the one thousand dollars and possibly more was made to Armstrong by Daily; and of the place where the agreement was made between Armstrong and Daily whereby Armstrong was to connive at the substitution of the Ayton machinery for an equal amount of new machinery, of the place where, on May 13, 1908, Daily "paid" Armstrong the \$1,500, and of how or from whose hands Armstrong received the \$1,500.

It appears from the testimony of Armstrong (next set out herein) at the *habeas corpus* hearing, that said promise was made in Chicago, Illinois, on or before July 19, 1907, and that Daily did not in person, if anyone did, pay to Armstrong \$1,500 or any other sum of money and, from the claims of the

counsel for appellant made on the *habeas corpus* hearing, that Daily did not in person pay Armstrong the \$1,500 or any other sum of money but that Daily sent the sum of \$1,500 to Armstrong, Daily at the time being in Chicago.

e. The testimony of Armstrong at the *habeas corpus* hearing. Trans. Rec., 141.) Armstrong was the only witness called on behalf of appellant. The substance of Armstrong's testimony at the *habeas corpus* hearing is the following: Early in the year 1907, Armstrong made Daily's acquaintance through the installation of the binder twine plant in the Michigan State prison. Whether the first meeting between Daily and Armstrong was in Chicago or in Jackson, Armstrong did not know. Armstrong met Daily, in Chicago and in Michigan, three or four times before July 22, 1907. "Within ten days prior to the 22nd of July, 1907," in Chicago, Illinois, Armstrong had a conversation with Daily, which conversation was in Daily's office or on the streets of Chicago. In that conversation Armstrong notified Daily that the Board of Control had decided not to accept the Ayton machinery, and thereupon Daily stated to Armstrong, in substance, that the Board of Control was making a mistake not to accept his proposition to put in the Ayton machinery; that the Ayton machinery was as good as new machinery, as Mr. Wolfer (warden of the State prison at Michigan City, Indiana) had informed the Board of Control, and that he, Daily, thought it could be arranged to put it in and that there would be a nice present in it for Armstrong. About that time Armstrong saw Daily on more than

one occasion, for the reason that Armstrong went to Kansas City and stopped in Chicago both ways and saw Daily each time. Armstrong didn't remember whether he received Daily's bid after he had informed Daily that the Board of Control refused to accept the Ayton machinery or whether Daily brought the bid with him to Detroit, or whether the bid came to Mr. Wrentmore, the consulting engineer for the Board of Control.

When Daily said to Armstrong that there would be a nice present in it for him, Armstrong asked Daily what the amount was, and he thought Daily said "one thousand dollars anyway." That conversation about the \$1,000 occurred in the City of Chicago, Illinois. Of that fact Armstrong was sure, but whether it occurred in Daily's office or on a street in Chicago Armstrong was not sure. (Trans. Rec., 142.)

(Whether Armstrong then and there agreed to accept the present or when he did, if ever, agree to accept the present, except that it is implied that he agreed to accept it at the moment on May 13, 1908, when the indictment alleges that it was given to him, the record is silent.)

Armstrong and Daily had talked also in Chicago about the hiring of a superintendent on Armstrong's trip to and from Kansas City. While Armstrong was in Kansas City he did hire a superintendent (for the binder twine plant).

Armstrong was present at a meeting of the Board of Control in Detroit prior to July 22, 1907. At that meeting bids were presented on behalf of two parties, the Hoover & Gamble Company, and the

Watson Manufacturing Company, the Hoover & Gamble Company presenting two bids, Armstrong thought. The bids were in writing. One of the Hoover & Gamble Company's bids included all the machinery located in Ayton, Canada, which was excluded by the other bid. Daily was not present in Detroit at that meeting *prior* to July 22, 1907, Armstrong impliedly testifies. (Trans. Rec., 142.)

Subsequently and prior to July 22, 1907, in Chicago, Illinois, Armstrong had a conversation with Daily about those bids, in which conversation Armstrong, acting on the instructions of the Board of Control, informed Daily that they had decided not to accept the bid including the machinery in Canada for the reason that in the sale of twine the International (Harvester Company) people might use it as a leverage against the prison-made twine, that they had installed old machinery and therefore could not make good twine, and in that conversation Armstrong asked Daily to make a bid not including that machinery, and at the same time informed Daily that the next meeting of the Board of Control would be on July 22. It was in the conversation in Chicago, related above in this paragraph, that Daily said that the Board of Control was making a mistake and that the other machinery was just as good.

Daily was present at the meeting of the Board of Control in Detroit, Michigan, on July 22, 1907. Armstrong did not remember about the modification of the bids nor did he recall meeting Daily on that day in Detroit before the meeting, but he did have a recollection of having some *correspondence* with Daily about where the meeting was to be held and

a faint recollection that he, Armstrong, was to meet Daily somewhere and show Daily where Navin's office (in Detroit) was, but as to meeting Daily, as stated by Daily in his testimony yesterday, at the Wayne Hotel and going up with him, Armstrong did not remember that.

After July 22, 1907, Armstrong did not again meet Daily until about the middle of the fall, in the month of November, 1907, at which time Armstrong had a conversation with Daily. Armstrong would not be positive and could not remember whether that conversation was in Jackson, Michigan, *or* whether it was over the 'phone, *or* whether it was in the City of Chicago, Illinois. That conversation was about a conversation which Daily had with Eminger, the secretary of the Hoover & Gamble Company. To the best of Armstrong's recollection that conversation was in Jackson, Michigan. (Trans. Rec., 143.) In that conversation Daily stated that when the Hoover & Gamble Company received the contract (some time in August, 1907) Mr. Eminger, the secretary, had objected to the word "new," referring to the machinery, and was afraid that they would have trouble with the consulting engineer in regard to the matter, and that Armstrong told Daily that he did not think that they would have any trouble with him.

Armstrong also thought he must have talked with Daily at that time about having trouble getting the buildings completed for the plant. Armstrong knew he "had some *correspondence* with Daily in regard to holding up the machinery and also holding up shipments of sisal." Armstrong did not remember

talking to him at that time, but he would not say that he did not.

The next time after November, 1907, that Armstrong saw Daily was the following spring after the machinery had been installed and started, about the fore part of April (1908). Armstrong did not know what the occasion was of Daily's coming, nor on that occasion did he have any talk with Daily about the machinery. On that occasion Armstrong met Daily in Armstrong's office in the prison, where at that time the Board of Pardons was in session. The secretary of the Board of Pardons notified Armstrong that Daily was outside. Thereupon Armstrong walked out of his office, met Daily, and Daily simply introduced him to Eminger, and Armstrong thought that he, Armstrong, then passed Daily and Eminger through the prison, that he did not go into the plant with Daily and Eminger, and on that occasion did not have any conversation with them in regard to the machinery. Armstrong thought that on that occasion there was a third party present with Daily and Eminger; that he would not want to say whether Governor Warner or Mr. Merriam was there that day or not.

Subsequent to July 22, 1907, Armstrong did not meet Daily at any time in the State of Michigan, except in the middle of November, 1907, and in the early part of April, 1908.

In answer to questions put to Armstrong by Judge Landis, Armstrong testified that to the best of his recollection he never had any talk with Daily in the State of Michigan about the present of a thousand dollars, and that he, Armstrong, did not on any occa-

sion have any conversation with Daily in the State of Michigan respecting anything in the way of any irregularity in connection with the installment of the machinery in the State prison at Jackson, Michigan, unless the conversation which Armstrong and Daily had in regard to the talk between Eminger and Daily about the word "new" occurred in Jackson, and that to the best of Armstrong's recollection that conversation between him and Daily about the word "new" in the contract occurred in Jackson, but that he, Armstrong, would not be positive in regard to that matter. (Trans. Rec., 143-144.)

f. Certain concessions and claims made in behalf of appellant at the *habeas corpus* hearing.

It ought to be added, perhaps, that the cross examination of Daily at that hearing assumed and conceded that Daily was not in Michigan either on May 1, 1908, or on May 13, 1908, and sought to elicit from him evidence that he, Daily, had on some other day than said May 1st or May 13th, done an act which was "the juridical cause" of the crime sought to be charged in the two indictments. The cross-examination of Daily also sought to prove that Daily sent his son from Chicago to Armstrong on May 13, 1908. This Daily denied. (Trans. Rec., 140.) Daily's denial is all the evidence there is in the record on that point. Nevertheless, counsel for appellant at page 3 of their brief state that "Armstrong * * * received through the hands of the son of Daily a present of \$1,500 in money."

Armstrong did not testify at the hearing, nor was there any evidence, direct or circumstantial, offered at the hearing which tended to prove, that Arm-

strong, in any way, directly or indirectly, gave Daily to understand or infer that he, Armstrong, *accepted* Daily's implied proposal to make him a present of a sum of money, if he, Armstrong, would connive at the putting in of the Ayton machinery. Nor is there any evidentiary fact in the record, not even in Armstrong's affidavit annexed to the requisition, tending to prove that Armstrong accepted the said implied proposal of Daily. What does appear on this point in said affidavit is stated therein by way of conclusion, that is, "It was agreed and understood," etc. (Trans. Rec., 87.)

Said conclusion should be rejected as evidence because it is a conclusion of law. No indictment for perjury could be sustained upon that statement in the affidavit. An affidavit is a statement of facts, to the knowledge of the affiant. The statement in said affidavit that "Daily did substitute such second-hand machinery for a like quantity of new machinery" is a recital of a fact. But it is not stated in that affidavit how or when Armstrong learned that fact. It is consistent with all the facts in the record that Armstrong was informed of that fact by some employe of the Hoover & Gamble Company.

It is contended in the brief of argument on behalf of the appellee that Armstrong's testimony at the hearing makes necessary the rejection, as evidence, of the affidavit of Armstrong, annexed to the requisition.

g. Daily had two or three conversations in Michigan, in the year 1907, and prior to June 1, 1907, concerning the binder twine plant to be installed in the Michigan State prison. These conversations

were held at Detroit and Jackson, with different persons, namely, Armstrong, the Governor of Michigan, Wrentmore and the several members of the Board of Control. The last of these conversations in Michigan was before June 1, 1907. (Trans. Rec., 131.)

Daily was at Detroit, Michigan, on July 22, 1907, at Jackson, Michigan, Nov. 14, 1907, and April 6 and 7, 1908, and at no other time at any place in Michigan since said April 7, 1908. Daily was not in Michigan at any time in June, 1907, or on July 18, 19 or 20, or at any time during the first twenty days of July, 1907. At no time when he, Daily, was in Michigan was anything said or done by him to or in connection with Armstrong, or any other person, concerning the alleged present of a thousand dollars or more to Armstrong, or concerning any irregularity or wrong doing in connection with the performance of the Hoover & Gamble contract. The evidence in the record which supports the ultimate facts, above stated in this paragraph, immediately follows.

It is stated on page 14 of brief for appellant that "Daily tendered the bid" (meaning his second bid which was accepted) "in person within the State of Michigan." Upon said statement, which is contradicted by all the evidence in the record, and which there is no evidence whatever in the record to support, counsel for appellant builds his entire theory of the case by the following statement on said page 14, towit: "thus setting in motion the machinery by which the result was ultimately to be accomplished."

Counsel for appellant does not state on what day or at what place in Michigan "Daily tendered the

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bid in person in Michigan." It is necessary, therefore, to call the court's attention to all the evidence in the record on the point in question.

Daily was in Michigan in the month of July, 1907, only on one occasion, namely, at the meeting of the Board of Control at Detroit on July 22nd. Daily arrived at Detroit on that occasion some time during the night of July 21st or on the morning of July 22nd; but he did not meet Armstrong or any other person at Detroit until the morning of July 22nd. As to this point the evidence is all one way. Testimony of Daily (Trans. Rec., 126, 131, 132). Testimony of Armstrong (Trans. Rec., 141, 142, 143).

Daily in his testimony said: "The bid of July 19, 1907, was sent in to the Board of Control in my name." (Trans. Rec., 133, 134.) By that sentence Daily did not mean that he, while at Detroit, sent the bid in to that meeting. That sentence means simply that the bid had been sent to the Board of Control in Daily's name, not that it was sent to the Board of Control by Daily, while Daily was present at that meeting. Considered only in the light of its immediate context in the bill of exceptions, that sentence might mean that the bid was sent in to the Board of Control, while Daily was present somewhere near the place of the meeting of the Board of Control. But what is really meant by that sentence is readily ascertained from all the evidence in the bill of exceptions as to the time when, the place at which and the manner in which that bid was sent to the Board of Control. Considering all of the evidence on said point, it is clear that our interpretation of that sentence is correct.

The fact is that that bid was sent July 19, 1907, from Chicago, Illinois, by mail. It is in the form of a letter, addressed to Armstrong, and dated "Chicago, Ill., July 19, 1907." (Trans. Rec., 76.) Daily testified on the hearing that he sent that bid by mail from Chicago, Illinois. (Trans. Rec., 131, 132.) And Armstrong testified: "I could not say whether I received Mr. Daily's bid after I had informed him that the Board of Control refused to accept the Ayton machinery, or whether he brought it to Detroit, Michigan, with him, or whether it came to Mr. Wrentmore." (Trans. Rec., 142.) Armstrong had informed Daily of the Board of Control's refusal to accept the Ayton machinery in Chicago about ten days prior to July 22, 1907. (Trans. Rec., 141.)

On that morning of July 22, 1907, Daily met Armstrong at the Wayne Hotel at Detroit, and walked with Armstrong up to the office of Mr. Navin, a member of the Board of Control, which office was at Detroit, Michigan. In the office of Mr. Navin on that day Daily met Armstrong, Wrentmore, the consulting engineer for the State of Michigan, the different members of the Board of Control and the Governor of Michigan. Nothing was done at the office of Mr. Navin on that day, except to open the second bids and to award the contract to the Hoover & Gamble Company. (Trans. Rec., 131-132.)

This is confirmed by Armstrong's testimony. (Trans. Rec., 141-143.)

Daily left Chicago on the night of November 13, 1907, arrived that night at Jackson, Michigan, and, on the morning of November 14, after getting break-

fast at the hotel, went out to the State prison and there met Armstrong. Daily made that trip to Jackson, Michigan, at the request of Armstrong, which request was made to Daily by Armstrong over the telephone. Over the telephone, Armstrong being at Jackson and Daily being in Chicago, Armstrong said to Daily that he wanted to see him about the congested condition of the warehouse in the prison; that they had been receiving sisal and had it stored all over town and that they were paying storage on it, and that he, Armstrong, could not just explain the situation, but he wanted Daily to come there and see if he, Daily, could not help them out in some way.

On arriving at the prison at Jackson, Michigan, on the morning of November 14, 1907, Daily was informed by Armstrong that the building wherein was to be installed the machinery for the making of twine was not finished and that it would not be finished for some time; that the machinery was coming in; that it was very heavy; that they were storing it in the warehouse intended for the twine and fiber; that the warehouse was full, and he wanted Daily to try to stop further shipments of machines and hemp. Up to that time the Board of Control had bought about 4,000 bales of sisal because the sisal was cheap.

Daily went through the prison door, being passed through by Armstrong, Armstrong not going with him, to the warehouse and examined its condition. When Armstrong passed Daily through the prison door Armstrong told the guard to remember when Daily came back to let him come through.

After examining the congested condition of the warehouse Daily decided to stop, and did stop, temporarily, the further shipments of machines from the works of the Heover & Gamble Company at Miamisburg, Ohio, to Jackson, Michigan, and also further shipments of sisal from Mexico to Jackson, Michigan. At that time there were a thousand bales of sisal on the way from Mexico to Jackson, Michigan, which thousand bales were then in a ship on the Gulf of Mexico, and in transit to Mobile, Alabama. Daily caused that sisal to be stored at Mobile, Alabama.

The foregoing was all that took place between Armstrong and Daily at Jackson, Michigan, on November 14, 1907, according to the testimony of Daily. (Trans. Rec., 132-133.)

Daily's account of what took place at Jackson, Michigan, on November 14, 1907, is confirmed by the testimony of Armstrong. (Trans. Rec., 143.)

It will be remembered that Armstrong testified that in November, 1907, he had a conversation with Daily about the word "new" in the contract, which took place either over the telephone, or in Chicago, Illinois, or in Jackson, Michigan, and to the best of Armstrong's recollection in Jackson, Michigan. Daily was not cross-examined respecting said conversation, but it will be observed that Daily testified without having any intimation whatever of the testimony which would be given by Armstrong, that he, Daily, was requested by Armstrong, over the telephone, to go to Michigan in November, 1907.

During the cross-examination of Daily, Daily, in substance and effect, denied that he ever had a con-

versation of any kind with Armstrong respecting the word "new" in the contract. On cross-examination Daily was asked whether or not, at some time or other Armstrong did not know of the substitution of the machinery, and Daily replied "Not from me." (Trans. Rec., 140.)

Again, Daily was asked during that cross-examination whether or not Armstrong did not know of the substitution of the Ayton machinery some time or other during the completion of the contract, and Daily replied that he, Daily, did not know that Armstrong ever knew it. Daily also in his cross examination answered that there was no understanding between him and Armstrong that the Ayton machinery was included in the bid, which was opened on July 22, 1907. (Trans. Rec., 139.) The force and effect of Daily's testimony on said point is due in some measure to the fact that Daily had no information of any kind or nature as to what testimony Armstrong would give concerning any such matter as a conversation about the word "new" in the contract. No such conversation, it will be observed, is set forth in the affidavit of Armstrong, annexed to the requisition.

On April 6, 1908, the binder twine plant being then installed and in operation at the prison, Daily went from Chicago to Jackson, arriving at Jackson on the evening of April 6, at which time he there met at the hotel Eminger, the secretary of the Hoover & Gamble Company. The purpose of the meeting with Eminger was the joint examination of the operation of the binder twine plant at the prison.

On April 7 Daily and Eminger walked through the

binder twine plant with the Governor of Michigan, Wrentmore, the Consulting Engineer of the Board of Control, and the members of the Board of Control. At the prison on April 7, 1908, Daily and Eminger met Armstrong, and it appears that no conversation of any consequence occurred between Daily, Eminger and Armstrong. As Armstrong in his testimony puts it, "Daily simply introduced me to Mr. Eminger and I think that I passed them through the prison." (Trans. Rec., 136-137, 143.)

There was no cross examination of Armstrong by counsel for Daily. A few questions were put to Armstrong by the court after his direct examination had been concluded. In response to those questions put to Armstrong by the court Armstrong testified that he did not at any time have a talk with Daily in the State of Michigan about this present of a thousand dollars; that to the best of his recollection he, Armstrong, did not have any conversation with Daily in Michigan at any time on that subject; and that he, Armstrong, did not have any conversation with Daily in the State of Michigan at all respecting anything in the way of any irregularity in connection with the installation of the machinery at the prison, unless the conversation that he and Daily had in regard to the talk that Daily had with Eminger (about the word "new" in the contract) took place in Jackson, and that to the best of Armstrong's recollection that conversation between him and Daily took place in Jackson. (Trans. Rec., 143-144.) Said last sentence should be read in connection with all of Armstrong's testimony on that point. Previously on the hearing Armstrong testified that said conversation

between him and Daily took place in Jackson or over the telephone or in Chicago, but to the best of his recollection at Jackson; but that he wouldn't be positive, that he couldn't remember where it took place. (Trans. Rec., 143.)

h. General nature of the evidence received at the *habeas corpus* hearing on behalf of Daily, to prove that Daily was in Chicago, Illinois, May 1 and May 13, 1908. Counsel for appellant in their brief state that they do not contend that Daily was personally present in Michigan on the 13th day of May, 1908, but they nowhere admit in their brief nor did they formally admit at the hearing that Daily was in Chicago, Illinois, and not in Michigan, on May 1 and on May 13, 1908. It is therefore necessary, in the judgment of counsel for appellee, to set forth a brief statement of the evidence which conclusively proves that Daily was in Chicago, Illinois, and not in Michigan, on May 1 and May 13, 1908.

The testimony given by the witnesses on those points is confirmed by a deposit slip, dated May 1, 1908, containing thereon the handwriting of Daily and delivered on May 1, 1908, by Daily, together with the amount of money specified thereon, to the receiving teller of the Northern Trust Company's Bank, located and doing business in Chicago, Illinois; by an Adams Express Company's receipt, dated April 30, 1908, and with Daily's name written thereon by Daily on April 30, 1908, in Chicago, Illinois; by an entry in the diary of Leonard A. Busby, in Busby's handwriting, made on the afternoon of May 13, 1908; and by many other documents, produced before and examined by the District Court and op-

posing counsel on the *habeas corpus* hearing, and more particularly by the letter-press copies of numerous letters and telegrams dictated by Daily to Emma Hopp, his stenographer, and personally signed by Daily in his own handwriting in his office at 115 Dearborn street, Chicago, Illinois, on the days on which those letters and telegrams bear date, respectively. Every one of said letter-press copies contains a fac simile of Daily's signature on the corresponding original letter or telegram. The letter-press copies were made and kept in Daily's office at 115 Dearborn street, Chicago, Illinois, and were copied in the regular course of business for many years at said 115 Dearborn street by Daily's stenographer, Emma Hopp. The books containing those letter-press copies were produced on the *habeas corpus* hearing in the District Court for the inspection of the court and opposing counsel.

The evidence introduced on behalf of Daily, and referred to above, is set forth on 50 pages (pages 90 to 140 inclusive) of the printed abstract of the record.

Omitting the details of the evidence adduced on behalf of Daily, because of its nature and of its volume, there follows a condensed statement of *the ultimate facts, clearly and conclusively established by the evidence.*

Daily has been living in the City of Chicago, Illinois, continuously since 1891. During the years 1907-1909, and for many years prior thereto, Daily's residence was at 1624 Kenmore avenue, and his office at 115 Dearborn street, in the said City of Chicago. During said years he has been a "sales

agent" (see Armstrong's affidavit), not a collecting agent, for the Hoover & Gamble Company, named in the indictment, and also an agent for Messrs. Avelino Montes S en C. Merida, Yucatan, Mexico, dealers in sisal hemp. For some years prior to 1908, as well as during 1908 and subsequently, Daily was a stockholder in the Mexican Nevada Exploration Company, the name of which company was subsequently changed to the San Jose Lumber Company, which company owned large tracts of valuable woodland in Mexico.

The witnesses Stanhope and Hoyer were also stockholders in that company, and the witness Yeates was on May 1, 1908, contemplating becoming and subsequently became a stockholder in that company, and a Mr. Tripp, of North Vernon, Indiana, was its president. Said Stanhope and Yeates, during the year 1908, and for many years theretofore, occupied an office adjoining the office of Daily at said 115 Dearborn street, Stanhope being a retired business man and Yeates being a timberland expert and in the real estate business. Throughout the year 1908, Daily kept his bank account in the bank of the Northern Trust Company, at La Salle and Monroe streets, in said City of Chicago; and during the year 1908, and for many years prior thereto, the witnesses Hoyer and Cohlgraff were partners and engaged in the real estate business, with their office at 1310 Sheridan Road, in said City of Chicago, and represented Daily in attending to such real estate business as Daily had in buying and selling real estate and in collecting rents from tenants in Daily's houses. Daily's residence at 1624 Kenmore avenue, is one

and a half blocks north and one block west from the office of Hoyer and Cohlgraff, at said 1310 Sheridan Road.

During the year 1908, and prior thereto, Daily was also trustee for the Brownsville Irrigation Company, which company, it appears, owned land in Cameron County, Texas. The witness Busby, a Chicago lawyer, of the firm of Shope, Zane, Busby & Weber, whose office was at 100 Washington street, in said City of Chicago, was also interested as a stockholder in the Brownsville Irrigation Company, and acted as counsel for Mr. Daily in all his legal matters.

Daily, at his office at said 115 Dearborn street, on the afternoon of April 30, 1908, received from said Mr. Tripp, from North Vernon, Indiana, by the Adams Express Company, a box of samples of wood, showing the different kinds of wood owned in Mexico by said San Jose Lumber Company. At the time Daily received that box he signed an express receipt therefor, which receipt was produced in evidence, a copy of which is set forth on page 92 of the transcript of the record. It was shown by the witnesses Clark and McWilliams, respectively, the agent and wagon driver of the Adams Express Company, in Chicago, that said box was delivered at Daily's office on April 30, 1908, and that the person who signed "Milton Daily" on said receipt was the person to whom that box was delivered. The signature, "Milton Daily," on that receipt was identified as the signature of Daily by Daily, Stanhope, Yeates and Emma G. Hopp, Daily's stenographer.

About nine o'clock on the morning of May 1, 1908, Daily carried that box of samples of wood from his

office into the adjoining office occupied by Stanhope and Yeates, in which latter office the box was at once opened and the samples of wood taken therefrom. On each sample was written, in Spanish by some Mexican engineer, the name of the kind of wood it was. Stanhope wrote upon each of said samples the English equivalent of the Spanish name, written thereon. And thereupon followed a general discussion among all the persons there present, namely, Stanhope, Yeates, Hoyer and Daily, as to said samples of wood and as to the profit there would be in disposing of the timber-land owned by them. Stanhope, Yeates, Hoyer and Daily remained in the office of Stanhope and Yeates discussing those samples of wood and their lumber project until about half past twelve in the afternoon of that day, May 1, 1908. At the last named hour the parties separated, went out and ate their luncheon and returned to the office of Stanhope and Yeates and continued the discussion of the samples of wood and their lumber project until the middle of that afternoon. In the afternoon of that day the witness Engs was also present in the office of Stanhope and Yeates and participated, among other things, with the persons there, in the conversation about those samples of wood. Engs states in his testimony the nature of his business with the witness Stanhope, which required him to meet Stanhope in Stanhope's office on May 1, 1908, and how he, Engs, fixes the date as May 1, 1908. (Trans. Rec., 105-106.) Daily and the witnesses, Stanhope and Yeates, fixed the dates of that conversation as May 1, 1908, by the date of said express company's receipt, Hoyer and Stan-

hope stating that Daily told them on the evening of April 30, 1908, that the samples had come. The witness Hoyer fixes the date of that conversation as May 1, 1908, in another way. Hoyer, as stated above, was a member of a firm who were Daily's real estate agents. On the morning of May 1, Hoyer went to Daily's office in order to see him about a tenant, named Dolff, who had moved out of one of Daily's houses at 1334 Byron street, in Chicago, April 30, 1908, owing Daily a month's rent. Hoyer talked with Daily about that matter of rent and was told by Daily to proceed to bring suit for it. Thereupon Hoyer, who had Dolff's lease with him, wrote upon that lease the following: "May 1/08. Saw Daily, Commence suit."

On April 29, 1908, Daily dictated, at his office at said 115 Dearborn street, to his stenographer, Emma Hopp, the letters marked respectively 4, 5 and 6, each bearing date April 29, 1908, and on April 30, 1908, the letters marked respectively 7, 8 and 9, each bearing date of April 30, 1908, and on May 1, 1908, the letters marked respectively, 10, 11, 12 and 13, each bearing date May 1, 1908, and on May 2, 1908, the letters marked respectively 14, 15, and the telegram marked 16, each bearing date May 2, 1908. (Trans. Rec., 106-117.) The letter-press copies of these letters and that telegram were each subscribed "Milton Daily," by Milton Daily, on the days on which they bear date, in his own handwriting, at his said office 115 Dearborn street. The latter statement is confirmed by the testimony of said Emma Hopp.

Daily's testimony confirms the foregoing testi-

mony. Daily also states that he was in said City of Chicago throughout the day and night of April 29, April 30, May 1 and May 2, 1908, spending each night at his said residence. (Trans. Rec., 125-129.)

When said persons in the office of the witnesses, Stanhope and Yeates, separated for luncheon, as stated above, at the noon hour on May 1, 1908, Daily went to said bank of the Northern Trust Company, in the City of Chicago, and made out, in his own handwriting, a deposit slip for \$507.50, which deposit slip is dated May 1, 1908, and deposited on said May 1, 1908, to his credit in that bank, that slip and that amount of money. The deposit slip was produced from the vaults of said banking company, by the witness Rose, a messenger of said banking company, and was received in evidence. (Trans. Rec., 91.) The handwriting on that deposit slip was identified as Daily's handwriting by Daily. That bank closes its doors at three o'clock in the afternoon.

On May 1, 1908, Daily also, at his said office at 115 Dearborn street, in Chicago, drew and signed his name to and mailed a check for \$50, payable to Geo. P. Smith, an attendant at the Dunning Insane Asylum of Cook County, Illinois, for certain commissions due from Daily to said Smith on sales of land made by said Smith for said Brownsville Irrigation Company. That check is dated "Chicago, May 1st, 1908." On May 5, 1908, Daily received a letter from said Smith which, following the letter head, reads as follows:

Dunning, 5/5-1908.

Milton Daily, 115 Dearborn Street, Chicago.

Dear Sir:—Yours of 1st enc. ck. for \$50.00

rec'd. for which please accept thanks. Pardon
delay in acknowledging. I am yours truly
 GEO. P. SMITH."

That check and letter were received in evidence.
 (Trans. Rec., 127-129.)

Daily also testified that he was in Chicago, Illinois, at his office and elsewhere, during the day and evening, and at his residence by night, on May 12, 13 and 14, 1908, respectively.

In his office at said 115 Dearborn street Daily, on May 12, 1908, dictated to his stenographer, Emma Hopp, and in person signed his name to, the letters and a telegram, each bearing date May 12, 1908, and respectively numbered 17, 18, 19, 20, 21 and 22; and on May 13, 1908, the letters and a telegram, each bearing date May 13, 1908, and respectively numbered 23, 24, 25, 26 and 27; and on May 14, 1908, the letters and a telegram, each bearing date May 14, 1908, and respectively numbered 28, 29, 30 and 31. (Trans. Rec., 117-125, 129-131.)

Between two and five o'clock on the afternoon of May 13, 1908, Daily called on his lawyer, Leonard A. Busby, at the office of said lawyer at 100 Washington street, in the city of Chicago, and there spent about an hour in conference with him. Daily had frequently consulted said Busby about his trusteeship for the Brownsville Irrigation Company. Daily, as trustee for that company, had been selling its land since late in the year 1906. He had sold one 600-acre tract, called Tract 128, to one Brownell, and received in payment therefor Brownell's notes with certain security. The first of Brownell's notes fell due about

the middle of May, 1908, and there was some question in the minds of Busby and Daily whether that note would be paid by Brownell, and also about the sufficiency of the security, and it was concerning the Brownell note and the security therefor, and also about the sale of a certain 745-acre tract of land belonging to the same company, and called the Rancho Ziejo Tract, that led Daily to call at the office of Busby on the afternoon of May 13, 1908. Busby was the largest stockholder in the Brownsville Irrigation Company.

Busby has for many years kept a diary in the regular course of his professional business as a lawyer, in which he has daily made entries concerning matters pertaining to his business. On May 13, 1908, Busby, in his own handwriting, made in that diary the following entry: "Saw Daily P. M. Says B. L. 1 notes are all right and that Brownell will need time but will pay. Hopes to sell the Rancho Ziejo tract."

It was the foregoing entry in the diary which enabled Busby to testify that he met Daily at his office in Chicago on the afternoon of May 13, 1908. That entry was received in evidence and that diary was inspected by the court and counsel for appellant. (Trans. Rec., 93-94.) Daily, having no recollection of the date of that call upon Busby, gave no testimony about it.

While the witness Busby was giving his testimony Mr. Barkworth, counsel for Strassheim, sheriff, said to the court in response to questions put to him by the court, that it was not contended on behalf of

Strassheim that Daily was in Michigan on May 13, 1908. Whereupon the following occurred:

"The Court: As far as that is concerned the record may show that he was not in Michigan on that day?

"Mr. Barkworth: I don't know that we want to admit that. *I simply say that we have no knowledge that he was in Michigan on that day.* I simply don't want to admit it as a matter of record. I don't want the record to show that we admit that he was not there on that day.

"The Court: Will there be testimony on behalf of the State of Michigan that Daily was in Michigan on that day?

"Mr. Barkworth: I think not, your Honor."

Hoyer and Cohlgraff kept their real estate office at 1310 Sheridan Road, in Chicago, open until eight o'clock every night except Sunday night for the accommodation of persons wishing to pay rent. Either Hoyer or Cohlgraff, not both of them, was in that office every night.

About seven o'clock on the night of Tuesday, May 12, 1908, Daily met Cohlgraff at said real estate office, whither Daily had gone for the purpose of talking over with Hoyer a certain deal, which is described in the testimony of Hoyer. After a short talk between Daily and Cohlgraff on the night of May 12, 1908, Cohlgraff closed his office and walked with Daily north on Sheridan Road (Sheridan Road being a street running north and south) as far as the next intersecting street north, which was Grace-land Avenue. There Cohlgraff turned west (which was not his usual route home) to pay a small bill due from Cohlgraff to one Telfser, then doing business

at 1349 Graceland Avenue under the name of Sheridan Tailoring Company. Upon arriving at Graceland Avenue Cohlgraff expected Daily to turn west with him for the reason that so to do would be the shortest way home for Daily, Daily's residence being one block west and one and a half blocks north from the real estate office of Hoyer and Cohlgraff, but Daily, instead of turning west with Cohlgraff, bade Cohlgraff good-night and walked straight north on Sheridan Road; whereupon Cohlgraff asked Daily where he was going, and Daily said that he was going to (the witness') Stanhope's house. Stanhope's house was at 945 Alexander Place, east and south from Daily's house. After parting with Daily at the intersection of Sheridan Road and Graceland Avenue, Cohlgraff continued west to Telfser's place and then and there paid Telfser \$4.50, owing to Telfser by Cohlgraff, for which payment Cohlgraff took from Telfser a receipt, which is dated May 12, 1908, was identified both by Cohlgraff and Telfser and is in evidence. (Trans. Rec., 99-101.) Stanhope testified that Daily was at his (Stanhope's) residence at 945 Alexander Place on the night of May 12, 1908, till about ten o'clock, playing billiards with Stanhope. Stanhope fixed that date by reference to the dates of a paper and letter, which are in evidence and are designated Stanhope 1 and Stanhope 2, respectively. (Trans. Rec., 103-105.)

On the morning of May 13, 1908, when Hoyer and Cohlgraff met at their real estate office, Cohlgraff told Hoyer that Daily wanted to see him about a deal, whereupon Hoyer said to Cohlgraff that he supposed it was that Byron street deal. There-

upon on the morning of May 13, 1908, Hoyer called up Daily on the telephone and was informed by Daily that he wished to see Hoyer about a deal which he had with reference to the Byron street property, and Hoyer told him that he would be at his office that night, and if he had time to drop in, and Daily said he would. On the night of May 13, 1908, Daily called at the office of Hoyer and Cohlgraff and there discussed with Hoyer a deal to sell his six-story flat building at 1334-1336 Byron street. The conversation about said deal at that time is related in the testimony of Hoyer and Daily. (Trans. Rec., 101-102, 129.) May 13, 1908, is Cohlgraff's birthday. Cohlgraff is Hoyer's brother-in-law. Hoyer made Cohlgraff a present of a box of cigars as a birthday gift on May 13, 1908, just about the hour of the morning of that day at which Hoyer called up Daily on the telephone. (Trans. Rec., 101-102.)

The witnesses Yeates and Stanhope also met Daily from time to time during the forenoon of May 13, 1908, at the office of Daily and at the office of Yeates at 115 Dearborn street, in the City of Chicago, and state in their testimony that they fix the time when they so met Daily as May 13, 1908, by reference to certain entries in Yeates' diary, made therein on May 13, 1908, which entries are in evidence. The Yeates diary was also produced and examined by court and opposing counsel. (Trans. Rec., 97-98, 103.)

BRIEF OF ARGUMENT.

A.

THE RULE OF LAW AS TO FUGITIVES FROM JUSTICE, APPLIED TO THE FACTS.

1. A fugitive from justice, within the meaning of Article IV, Sec. 1, Subd. 2, of the Constitution of the United States, and of the Act of Congress passed in pursuance thereof, is a person who stands charged by indictment or affidavit in the demanding state with committing a crime therein, and who was corporeally within that state at the time, when, if ever, the crime was committed, and has thereafter departed therefrom and is found in the surrendering state.

Hyatt v. New York ex rel. Corkran, 188 U. S., 691.

In re Palmer, 138 Mich., 36, cited on page 21 of brief for appellant, and all other decisions of courts which seem to hold that it is sufficient to show that the accused was in the demanding state *at or about the time* the offense was committed, are overruled by *Hyatt v. New York ex rel. Corkran*, *supra*.

Hayes v. Palmer, 21 App. Cases, D. C., 450, cited at page 20 in brief of counsel for appellant, follows the rule laid down in *Hyatt v. New York, ex rel. Corkran*, *supra*, applies said rule to the *continuing* offense of keeping a gambling house and holds the evidence produced to be insufficient to show that the relator, Hayes, was not in the demanding state at

the date stated in the indictment, namely, June 2, 1902. Daily is not charged in either indictment with a continuing offense, so that in no respect can the case of *Hayes v. Palmer*, *supra*, be held to be in point.

Ex parte Hoffstot, 180 Fed. Rep., 240, also follows the rule of the *Corkran* case and applies said rule to the offense of conspiracy, also a continuing offense. In that case the trial court held that there was evidence tending to prove that Hoffstot was in Pennsylvania while a material act was done in that state in furtherance of the conspiracy, and there was no evidence showing that Hoffstot was not in Pennsylvania at the time said act was done. That act was proof that Hoffstot had committed the crime of conspiracy, while he was corporeally in Pennsylvania. In the case at bar the trial court held the contrary, and all the evidence is that Daily was not in Michigan when the crime was committed.

As to the ultimate question see, also, *State v. Hall et al.*, 115 N. C., 811, as reported with footnotes in 28 L. R. A., 289. In those footnotes will be found a condensed statement of the points held in the different interstate extradition cases as late as 1894.

2. Assuming that Daily does stand charged, in one of the two indictments, annexed to the requisition, with the crime of obtaining by false pretences on May 1, 1908, \$10,000 in money from the people of the State of Michigan, and in the other of said indictments with the crime of giving to Armstrong on May 13, 1908, \$1,500 as a bribe, it was sufficient to entitle Daily to his discharge from the custody of Strassheim, sheriff, if Daily showed by clear and

conclusive proof that he was not corporeally within the State of Michigan, either on May 1, 1908, or on May 13, 1908, the days on which it is alleged, respectively, in the said indictments that he committed said crimes, sought to be averred therein, unless there were proof that said crimes were committed on some other days than those named in the indictments.

3. Clear and conclusive proof was offered to the District Court, and appears in the record, that Daily was not corporeally within the State of Michigan either on May 1, 1908, or on May 13, 1908; and there was no proof offered that Daily committed either of said crimes on any of the days on which it is shown by the evidence that he was corporeally within said state.

4. But Daily does not stand charged with committing any crime whatever in the State of Michigan by the indictment, annexed to the requisition, which purports to charge Daily with obtaining by false pretences \$10,000 in money from the people of said state. Therefore, so far as said indictment is concerned, it is immaterial whether Daily, at any time, while corporeally in the State of Michigan, committed any crime against the laws thereof.

5. Daily does stand charged with the crime of bribery by the indictment, annexed to the requisition, which avers that Daily gave \$1,500 to said Armstrong as a bribe on May 13, 1908. But Daily was not corporeally in the State of Michigan on May 13, 1908, or on any other day, when, if ever, said crime of bribery was committed. Therefore, so far as said

indictment for bribery is concerned, Daily is not a fugitive from the justice of the State of Michigan.

6. Daily did not at any time, while he was corporeally in the State of Michigan, do any act, which amounts to the commission of said crime of bribery, or of said crime of obtaining \$10,000 by false pretences, or any other crime, within the meaning of said article of the Constitution of the United States, and of said Act of Congress; in other words, Daily did not, while corporeally in the State of Michigan, do any act, which was *the juridical cause* of either of said crimes.

7. Counsel for appellant waive, by their statement on page 6 of their brief, the question as to the jurisdiction of the District Court, assigned for error in the first of the assignment of errors. (Trans. Rec., 60.) Therefore, that question is not argued herein.

B.

CONTENTIONS ON BEHALF OF STRASSHEIM, APPELLANT.

It is contended on behalf of Strassheim, sheriff, the appellant, that:

1. Daily stands charged, in Michigan, by the two indictments, annexed to the requisition, with committing, in Michigan, the crime of obtaining, on May 1, 1908, \$10,000 in money, by false pretences, and the crime of bribing Armstrong on May 13, 1908.

2. Even if the proof shows that Daily did not commit those two crimes on the days specified in the indictments, yet, what Daily did in Michigan on each and every one of three different days, namely, at Detroit, on July 22, 1907, at Jackson, in November, 1907, and again at Jackson, on April 7, 1908, amounts

to and constitutes the commission of each of said two crimes.

3. Therefore, Daily being found in Illinois, is now and has been continuously since May 1, 1909, the day on which the indictments were returned by the grand jury, a fugitive from the justice of the State of Michigan.

C.

REPLY TO CONTENTIONS ON BEHALF OF STRASSHEIM.
 CONTENTION ON BEHALF OF DAILY AS TO THE NATURE
 OF THE ACT, NOT BEING THE ACT WHICH CONSUM-
 MATES THE CRIME CHARGED, YET AMOUNTS TO THE
 COMMISSION OF THE CRIME CHARGED.

1. It is conceded that Daily stands charged by indictment in Jackson County, Michigan, with committing, in said county and state, the crime of giving \$1,500, as a bribe, to Armstrong on May 13, 1908. But it is contended that Daily is not a fugitive from the justice of the State of Michigan because or on account of the crime charged in said indictment, for the reason that the evidence, produced by Daily upon the hearing of the writ of *habeas corpus* in the District Court and set forth in the bill of exceptions incorporated into the record in this case, clearly and conclusively shows that Daily was not corporeally within the State of Michigan either on May 13, 1908, or at the time when, if ever, said crime of giving a bribe to Armstrong was committed.

2. It is further contended that Daily does not stand charged in Jackson County, Michigan, with committing, in said county and state, the crime of obtaining \$10,000 from the people of the State of Michigan by false pretences on May 1, 1908; but, as-

suming that Daily is so charged with the commission of said crime on May 1, 1908, it is contended that Daily is not a fugitive from the justice of the State of Michigan, because the evidence produced upon the hearing of the writ of *habeas corpus* in the District Court and incorporated into the bill of exceptions in the record in this case, clearly and conclusively shows that Daily was not corporeally within the State of Michigan either on May 1, 1908, or at the time when, if ever, said crime of obtaining \$10,000 from the people of the State of Michigan by false pretences was committed.

3. It is further contended on behalf of Daily that the committing of a crime, within the meaning of the laws governing interstate extradition, means either the committing of the act which is the consummation of the crime, to-wit, the actual obtaining of the \$10,000 by false pretences or the actual giving of the \$1,500 or the committing of an act that was *the juridical cause* of the actual obtaining of the \$10,000 by false pretences, or, if any such act is possible other than procuring another person so to do, of the actual giving of the \$1,500 as a bribe.

The crime of obtaining money by false pretences is made up of at least two acts, so far as the accused alone is concerned, which may be committed at different times. In this respect, said crime is like the crime charged in the *Cook* case, 49 Fed. Rep., 833, 843. On the other hand, the crime of bribery charged consists of a single act, the act of giving, so far as the accused is concerned.

4. It is also contended on behalf of Daily that what Daily did in Michigan on each and every one

of said three days, namely, at Detroit on July 22, 1907, at Jackson in November, 1907, and again at Jackson on April 7, 1908, was not the juridical cause of the actual obtaining of the \$10,000 by false pretences or the actual giving of the \$1,500 as a bribe.

D.

QUESTIONS RAISED ON THE RECORD.

The following questions are therefore raised on the record and presented to this court for its decision, namely:

1. Does the indictment, annexed to the requisition, for obtaining the \$10,000 by false pretences charge that crime or any other crime?

2. What is the nature and character of the act, if any, which, although it is an act short of the actual commission of the crime charged in an affidavit or indictment, yet amounts to and constitutes the commission of such crime, within the meaning of said Article of the Constitution of the United States and of said Act of Congress?

3. Did Daily, on any day, while he was corporally in the State of Michigan, do any act which amounts to and constitutes the commission of said crime of bribery, although it was an act short of the actual giving of the \$1,500 to Armstrong?

4. Assuming that Daily stands charged, by one of the indictments, annexed to the requisition, with obtaining \$10,000 from the people of the State of Michigan by false pretences, did he, while corporeally in the State of Michigan, do any act which amounts to and constitutes the commission of said crime, within the meaning of said Article of the Constitu-

tion of the United States and of said Act of Congress, although it was an act short of the actual obtaining of the \$10,000 by false pretences?

5. All the other questions decided by the District Court, being questions of fact, were conclusively determined in favor of Daily by the final order of the District Court.

E.

THE INDICTMENT FOR FALSE PRETENCES DOES NOT CHARGE A CRIME.

1. The indictment for obtaining the \$10,000 by false pretences, tested, not as a pleading but by the rule laid down in *Pierce v. Creecy*, 210 U. S., 387, 402, does not charge a crime, either upon its face or when considered in the light of the contract between the Board of Control and the Hoover & Gamble Company, generally described in that indictment and set forth *verbatim* in the fourth count (Trans. Rec., 76-79) of the indictment for bribery.

It is assumed that "substantially charged," within the rule laid down in *Pierce v. Creecy*, *supra*, means that facts, which make up the supposed crime, are substantially *stated* in the indictment.

2. The indictment for obtaining \$10,000 by false pretences does not, tested by said rule, charge a crime, for the following reasons:

a. It lacks the name of the person, or officer, or body of officers, of the State of Michigan, to whom the alleged false statement was made. Therefore the indictment fails to show that there was a false pretence in the transaction described. That is, it appears upon the face of every count that one es-

sential element of the offense sought to be charged is wanting, to-wit, a false pretence. This has been expressly held in the three following cases, the first two of which are Crown Cases Reserved. Bishop also so states the rule.

Reg. v. Sowerby, 17 Cox C. C., 767.

Reg. v. Silverlock, 18 Cox C. C., 104.

In re Schurman, 40 Kan., 533.

2 Bish. New Crim. Proc., Sec. 173 (3).

It is not conceivable that there was a false pretence unless there was a false statement actually made to some person. In *Reg. v. Sowerby*, *supra*, it is said by Lord Coleridge, C. J., speaking for the full court:

“Now, a pretence means the holding out to some person. The person to whom the pretence is held out must therefore be stated.”

The content of a false pretence is at least three-fold; (a) a false statement of fact; (b) made to another person; and (c) with intent to induce the latter person to rely upon it and to part with something of value.

2 Bish. New C. L., Sec. 415 (3).

Without the averment of the name of the person to whom the false statement was made it does not appear upon the face of the indictment how the \$10,000 were or could have been obtained by Daily and his co-defendants by means of that false statement. And unless the false statement was made to some person, or officer, or body of officers, representing the State of Michigan, it is impossible that the peo-

ple of that state could have parted with the \$10,000 because of their reliance upon it.

b. Because there is no averment of the person, if any, to whom the defendants "did falsely pretend," it appears upon the face of every count of the indictment that the averment that the defendants obtained the \$10,000 by means of false pretences is an averment of "the pleader's conclusions."

Enders v. The People, 20 Mich., 233, 240.

c. Moreover, the matter, which it is stated in each count of the indictment, the defendants "did falsely pretend" is not a fact or an existing condition, and, therefore, cannot constitute a false pretence.

It is averred in every count of the indictment under consideration, in substance, that the defendants "did falsely pretend" that the machinery was new and unused and complied with the terms of the contract, whereas the truth is that it was not new, but was worn, used and second-hand and did not comply with said terms. Clearly, the representation that the machinery complied with the terms of the contract is the representation of a conclusion of law, and not of a fact.

And whether a thing is new and had not been used before is largely a matter of opinion, especially in a sale wherein the vendee sees the thing and examines it, and is as capable of determining the truth of the representation as the vendor, and does not pay his money for it until he has seen and examined it.

Such was the situation in the case at bar. The

money was not to be paid except for machinery delivered at the prison, where it could be examined by the Board of Control and all its representatives. And the contract, which is set out *verbatim* in the fourth count of the indictment for bribery, provides that the fourth "25%" of the contract price shall not be paid until after the machines had been installed in the prison and operating and tested by Wrentmore, the consulting engineer of the Board of Control—the vendee's expert.

It has been held that representations, even if relied upon, that certain patents were "new, useful and had not been in use before," are necessarily based, to a large extent, upon mere opinion, and when made by the vendor to the vendee, the vendee being just as able to determine the real fact as the vendor, are not such a fraud as constitutes an actionable injury, *even in a court of equity*. This case seems to be directly in point.

Dillman v. Nadlehoffer, 119 Ill., 567, 574, 576.

In the application of said rule in the case at bar the "vendee" is, because of the fourth and sixth provisions of the contract, to all intents and purposes, Wrentmore, the consulting engineer of the Board of Control, and a recognized expert.

The foregoing doctrine is applicable to criminal cases.

Com. v. Norton, 11 Allen (Mass.), 266, 267, 268.

Com. v. Drew, 19 Pick., 179, 184, 185.

When is an article "new" in trade? No article is sold the moment it is finished. When does it cease to be "new"? How much may it be shop-worn, for example, before it ceases to be "new"? How much must it be soiled, or dust-covered, or weather-stained to render it not "new"? That depends upon the nature of the article, somewhat, and the purpose to which it to be applied. Is an automobile of the 1911 pattern new or not, because it was built in the fall of 1910 and not in the early spring of 1911, and, therefore, will be repainted before it is offered to a customer? Is it new or not, because its machinery and running gear were tried out 45 days instead of 25 days? The contract called for *new* machinery, it is urged. So be it. Then it did not call for *unused* machinery. But new means unused. Does it? Then manufacturers must cease to use machinery in order to test it thoroughly before delivering it to a customer; otherwise they will be selling second-hand machinery. But the indictment does not mean *that kind* of using. Then what kind does it mean? Why was not the kind *meant specified*? And be it remembered that all and every kind of using of machinery *wears* it and renders it, in some degree, *worn* machinery. And it is the better for being partly worn. Every engine, built for a warship, which requires the most durable and efficient engine that it is possible to build, is set up on shore and tried and tested for weeks before it is put in place on the ship and there it is tested and run for weeks again before it is accepted. The same is true in substance of all machinery, sold and de-

livered and "*guaranteed*" by any responsible house. Where will the test for criminal conduct laid down in the indictment under consideration lead us?

d. Every count of the indictment under consideration lacks the averment of another essential element, namely, that the \$10,000 were transferred, delivered and paid to the defendants, or to a party represented by the defendants, *for* the machinery furnished and installed in the State prison. This element must expressly appear upon the face of the indictment. Without such element, it does not appear that there was any natural or necessary connection between the false pretences and the obtaining of the \$10,000. Without such element *the materiality of the false pretences* does not appear. Without such element the indictment charges no offense. *This is the rule in Michigan.* The facts averred must lead necessarily to the conclusion that the crime was committed. The pleader's conclusion is insufficient.

The rule in Michigan and Illinois, and in every other state following the Massachusetts rule (but not in England or in the states following the English rule) is that in a case for obtaining money or property by a sale or an exchange, effected by means of false pretences, the indictment must contain, *inter alia*, the following express averments:

First. An averment of all the essential elements or ingredients of such sale or exchange.

Second. An express averment that the false pretences were made with a view of, or for the purpose of, effecting such sale or exchange.

Third. An express averment that such sale or ex-

change was, in fact, effected by reason of the prosecutor's belief in and of his reliance upon the false pretences.

Enders v. The People, 20 Mich., 233, 240, is the leading Michigan case in support of this proposition, in which case it was held, *on motion in arrest*, that an indictment for obtaining money by falsely representing a farm, sold to the prosecutor by the defendant, was insufficient, *as not charging an offense*, because, although it contained all the other essential averments, it lacked an averment that the farm was conveyed to the prosecutor by the defendant as a consideration for the money paid to the defendant by the prosecutor for the farm; that in the absence of such averment no sufficient connection was made out between the false pretences and the parting by the prosecutor with his property; that such facts must be averred as will lead to a necessary legal conclusion of guilt; that if the facts alleged do not of themselves require this inference no allegation of guilt can help them out; that the result must follow from the facts, and not from the pleader's conclusions; that the defendant's mere representations that his land was good or bad could not have any tendency alone to induce a stranger to give him money; that if he made such representations in order to induce someone to purchase the land and did so induce him and obtained the money and mortgage as a price which would not have been given without those statements, *the materiality of those statements would be thus made to appear*; and that, until it appeared that a sale was thus brought about, the statements of the defendant concerning his farm

did not appear of any more importance than if he had been talking about the weather; that the facts alleged lead to no conclusions, and that an allegation of their importance amounts to nothing.

In the same case, *Enders v. The People, supra*, it was held that the indictment was not good by virtue of the Michigan statute, *declaring an indictment sufficient after verdict*, which is in the language of the statute, for the reason that such statute does not dispense with such substantial averments as were required at the common law. The indictment in that *Enders* case was held insufficient on motion in arrest. And in Michigan a motion in arrest for insufficiency of an indictment will be sustained only where the indictment charges no offense, or for want of jurisdiction in the court.

An indictment for obtaining money by falsely representing a watch, sold to the prosecutor by the defendant, was held bad in Massachusetts, on motion in arrest, as not charging an offense because, although it contained all the other requisites of such an indictment, it lacked an averment that the watch was delivered to the prosecutor by the defendant as a consideration for the money paid to the defendant by the prosecutor. The reasoning is the same as in *Enders v. The People, supra*.

Com. v. Strain, 10 Met., 521, 522.

The same rule is held in the following cases, which illustrate the same defect in indictments for obtaining money or property by false pretences in bargains and sales and exchanges of property, and similar transactions:

- Simmons v. The People*, 187 Ill., 327, 330, 331.
Com. v. Goddard, 4 Allen (Mass.), 312.
Com. v. Lannan, 1 Allen (Mass.), 590.
Com. v. Dunleay, 153 Mass., 330.
State v. Philbrick, 31 Me., 401.
Johnson v. State, 11 Ind., 481.
State v. Orris, 13 Ind., 564.
Jones v. State, 50 Ind., 473.
Cooke v. State, 83 Ind., 402.
Johnson v. State, 75 Ind., 553.
Funk v. State, 149 Ind., 338, 340.
State v. Saunders, 63 Mo., 482, 483.
State v. Bonnell, 46 Mo., 395.
State v. Hubbard, 170 Mo., 346.
State v. Phelan, 159 Mo., 122.
State v. Kelly, 170 Mo., 151.
White v. The State, 3 Tex. Ct. App., 605, 611.
Lutton v. The State, 14 Tex. Ct. App., 518, 523.

This defect appears in the third count of the indictment under consideration, as well as in the first two counts, although it seems the pleader sought so to word the third count that said defect would not appear therein.

There is no necessary connection shown on the face of the third count between "said machinery" (second-hand as well as new machinery being previously mentioned) "then and there paid for as new machinery," and the "used, second-hand and worn machinery," previously mentioned.

Nor is there any necessary connection between

the money (if money it was, there being no such allegation) "paid for" "said machinery" and the "ten thousand dollars" obtained and received by Daily, Armstrong and Eminger. (In an indictment under the false pretence statutes the thing obtained must be specified.)

It is not averred, in the third nor any other count, that the "ten thousand dollars" was obtained and received by Daily, Armstrong and Eminger *for* any machinery, new or second-hand, or in payment of the bills rendered for the alleged second-hand machinery.

Moreover, it appears upon the face of the third count that "said used second-hand and worn machinery" was "*theretofore* delivered and installed in said twine and cordage plant of said state." "Theretofore" means before "the first day of May, 1907," the only date previously specified. From this it appears that the used, second-hand and worn machinery was delivered and installed before the contract was entered into between the Board of Control and the Hoover & Gamble Company. The contract, it is averred in this third count, was entered into "thereafter," that is, after the first day of May, 1907.

Nor does it appear from the averments of the third count that the machinery delivered and installed in the twine and cordage plant was so delivered and installed by the Hoover & Gamble Company. They may have assigned that contract to some other manufacturer who delivered and installed the second-hand and worn machinery without the knowledge of the Hoover & Gamble Company.

Again, it is alleged in the third count that Armstrong, Daily and Eminger "did render bills" for the second-hand machinery and it does not appear that any one of them had the authority so to do. Why should the people of the State of Michigan pay to Armstrong, Daily or Eminger bills rendered by them,—bills, presumably from the averments, in their names.

It is also averred in the third count that "said machinery" was paid for but not that the bills, rendered by Armstrong, Daily and Eminger, were paid, nor is it averred in said count either that the bills were paid or that "said machinery" was "paid for" by the people of the State of Michigan or with their moneys, or to the defendants or the Hoover & Gamble Company.

So that, construing the third count as a whole, it appears that certain machinery was paid for, but by whom, or to whom, or with whose money, does not appear, and that, at the same time and place said machinery was paid for, the pleader concludes that \$10,000 in money were obtained and received from the people of the State of Michigan by the "fraudulent pretences so as aforesaid set up." The connection between that conclusion and the previous averments is not substantially shown.

e. There is wanting in every count of the indictment under consideration the element that the \$10,000 were obtained by any person having authority to represent the Hoover & Gamble Company in demanding and collecting the \$10,000. The offence sought to be charged is not one flowing *from the false assumption of such authority.*

It is shown in the second and third counts of the indictment for obtaining the \$10,000 by false pretences that Daily was the agent and Eminger the secretary of the Hoover & Gamble Company to represent that company in *making* the contract with the Board of Control, but not that either Daily or Eminger or Armstrong was authorized to demand and collect for that company any of the moneys claimed to be due it from the State of Michigan on account of the furnishing and installation of the machinery in the State prison. Therefore, any representations, true or false, made by Daily, Eminger or Armstrong, or either of them, were, of themselves, futile and vain for the purpose of effecting the collection of the \$10,000. Such representations did not bind the Hoover & Gamble Company, and the Board of Control had no authority to rely on them. On this point the following cases seem to be pertinent:

In re Schurman, 40 Kan., 533.

The People v. Behee, 90 Mich., 356.

f. Every count of the indictment under consideration lacks an allegation of the element of the ownership of the \$10,000 by the people of the State of Michigan. In the language of the Supreme Court of Michigan in *The People v. Arnold*, 46 Mich., 271, 273, it is consistent with all the averments in the indictment that the \$10,000 were the property of the defendants. Under all the authorities, including that decision of the Supreme Court of Michigan, it is essential in an indictment for obtaining money by false pretences to charge the name of the owner of the property obtained.

This want of the element of ownership is a substantial, not a formal, defect, and is not cured by a verdict of guilty even under statutes which render it unnecessary to charge the name of the person to be defrauded. Moreover, statutes like the English statute, 14 & 15 Vict., c. 100, which authorize the court to cause an indictment to be amended, are limited by force of the common law as well as of the constitutions of the several States of the United States to amendments of *variances* in the particulars of formal defects or immaterial matters. The omission of an averment is not a variance. The Michigan statute on amendments of indictments, cited by counsel for the appellant, is so limited expressly by its terms.

2 Bish. New Crim. Proc., Sec. 173 (2).

People v. Arnold, 46 Mich., 271, 273.

Richard Sill v. Queen, 1 Dearsly's Crown Cases, 132, 138-149.

Reg. v. Martin, 8 A. & E., 481.

Reg. v. Martin, 8 C. & P., 196.

Reg. v. Parker, 3 A. & E., 292.

State v. Lathrop, 15 Vt., 279.

Mays v. State, 28 Tex. App., 484.

State v. Myers, 82 Mo., 558.

1 Bish. New Crim. Proc., Secs. 96-98, 108-111.

g. Each and every defect in each count of the indictment under consideration, above pointed out, is a substantial, and not a formal, defect, and cannot be cured, by the insertion of averments of matters omitted, by virtue of the Michigan statute, cited at page 8 in the brief of counsel for appellant, which

provides that an indictment may be amended "in case of *variance* between *the statement* in the indictment" of the *name* or *description* of any place or thing "and in all cases whenever the *variance* between the facts alleged in the indictment and those proved by the evidence are not material to the merits of the case." Under the said Michigan statute on amendments of indictments, it is not allowable to amend by charging an offense, not included in the indictment.

Turner v. Muskegon Circuit Judge, 88 Mich., 359.

Tiffany's Crim. Law (of Michigan), 4th Ed., 386.

Nor can any of said defects be cured by the Michigan statute which provides that an indictment in the language of a statute is sufficient after verdict. It is expressly so held in *Enders v. The People*, *supra*, 20 Mich., 233, 240, which reviews the English decisions, interpreting and applying a similar English statute in several cases, and also in *The People v. Olmstead*, 30 Mich., 431, 437.

The defects, above specified, in the indictment under consideration, render that indictment void as charging no offense. A void indictment, or even a void information, is not amendable in Michigan or any other jurisdiction.

People v. Gage, 26 Mich., 30.

Byrnes v. The People, 37 Mich., 515.

Turner v. Muskegon Circuit Judge, 88 Mich., 359.

People v. Vogt, 156 Mich., 594.

People v. Zlotincke, 152 Ill. App., 363, 367, 371.

Commonwealth v. Williamson, 4 Grattan, 554.

State of Nebraska v. Denison, 60 Nebr., 157.

State v. Cavanaugh, 52 La. Ann., 1251.

Commonwealth v. Rodes, 1 Dana (Ky.), 595.

An indictment is void which entirely omits the averment of an essential fact.

Com. v. Harrington, 130 Mass., 35.

1 Bish. New Crim. Proc., Secs. 98a, 325, 326, 331, 508, 509, 513, 519.

h. But even if the indictment under consideration contained averments of all the matters which it is claimed it does not contain; still, even in that view of the case, it does not substantially charge any crime against the laws of the State of Michigan. This appears, it is respectively submitted, from the following considerations:

1. The false statement set forth in the indictment, read in connection with the negation of it (and it must be so read in order to deduce from all the averments what the real truth was) is consistent with the implication and inference that all the terms of the contract had been substantially complied with by the Hoover & Gamble Company. Hence, even if the \$10,000 were obtained by the defendants in part payment of the contract price (which is nowhere alleged), there was no fraud accomplished or intended by Daily and his co-defendants.

The statement alleged to be false is, in substance,

that the machinery was new and unused and complied with the requirements of the contract, whereas it was not new, but was worn, used and second-hand, and did not comply with the terms of the contract.

The negation is literal. How much worn the machinery was, or how much used, or *how* used, or to what extent second-hand, or in what respect it did not comply with the terms of the contract, is not averred. So the real truth may be, judging from the averments of the indictment, that the machinery had been used but for one minute before it was installed in the State prison and that the use to which it had been previously put was in testing it and had not impaired but on the other hand, had improved it. In one count it is averred that the machinery was old, but not how old. It may have been one day old. It is everyday parlance, that a child is one day old. It thus appears that the differences, if any, between the machines furnished and installed and the machines contracted for, was not substantial, and that the contract was in all its terms substantially complied with. Herein was no fraud, and under the decisions of the courts in Michigan as well as of other states of the United States and, also, of the United States, the full contract price could be recovered by the Hoover & Gamble Company in an action at law. The kind and make of machinery contracted for was delivered, accepted and operated by the Board of Control in the prison at Jackson.

American Hoist & Derrick Co. v. Johnson,
114 Mich., 172.

Menche v. Falk, 61 Wis., 623.

Lyon v. Bertram et al., 20 How. (U. S.), 149, 153.

2. It is not to be overlooked that the words "did falsely pretend" state a conclusion of law and not a fact, and that the quantum of truth and falsehood in what was pretended is to be determined from what is averred and the negation thereof.

Rex v. Perrott, 2 M. & S., 379, 392.

Du Brul v. State, 80 Ohio St., 52.

3. Tested, therefore, by the recognized rule, it clearly appears that the averment of what was falsely pretended, when read in connection with the negation thereof, in every count of the indictment, is a solemn admission of record that the alleged false pretence was substantially true and that the State of Michigan was not defrauded and that the defendants did not intend to defraud it.

People v. Behee, 90 Mich., 356.

Ex parte Wall, 107 U. S., 265, 275.

State v. Jones, 70 N. C., 75.

State v. Lambeth, 80 N. C., 393.

Redmond v. State, 35 Ohio State, 81, 83.

State v. Trisler, 49 Ohio State, 583.

Keller v. State, 51 Ind., 111, 114, 116.

State v. Webb, 26 Iowa, 262.

People v. Miller, 2 Parker's Crim. Rep., 197.

Barber v. The People, 17 Hun, 336.

Reg. v. Wickham, 10 A. & E., 34.

i. It appears from the fourth and sixth provisions of the contract, described generally in the indictment for obtaining the \$10,000 by false pre-

tences, but set forth *verbatim* in the fourth count of the indictment for bribery, that the Board of Control intended not to rely, and did not rely, upon any statement that might be or was made by any person that the machinery was new, but on the other hand, intended to and did rely solely and exclusively upon a certain "guarantee," specified in said fourth provision, and upon the judgment and approval of C. G. Wrentmore, consulting engineer of the Board of Control, as to whether said "guarantee" had been fulfilled, the judgment of Wrentmore to be founded upon what he ascertained concerning said machinery, not from the defendants or the Hoover & Gamble Company, but from an examination of the machinery itself, by Wrentmore himself, after "the machinery is all installed and tested and operating so as to fulfill the guarantee above given, to the satisfaction and approval of C. G. Wrentmore, Const. Engr., of the Board of Control" (sixth provision). (Trans. Rec., 78.)

The "guarantee" above mentioned is thus stated in said fourth provision:

"That said party of the second part guarantees the machinery above mentioned to be a complete plant for the manufacture of binder twine and capable of producing 9600 lbs. of mercantile binder twine in a working day of eight hours with a sufficient force of operatives; and also that all the machinery above mentioned shall be constructed in a thorough manner *free from any defects of materials or workmanship* and finished in a first-class manner, also that it shall be of the latest approved patterns."

Read in the light of the foregoing provisions of the contract, no crime is substantially charged in the indictment under consideration.

Where the parties to a contract provide in the contract that its faithful performance shall be determined by a third person, named therein, both parties are bound by the determination of that third person in the absence of fraud operating upon that person or by him.

McAvoy v. Long, 13 Ill., 147.

Fowler v. Deakman, 84 Ill., 130.

Telluride Power Trans. Co. et al. v. Crane Co., 208 Ill., 218.

Herrick v. Vermont Cent. R. R. Co., 27 Vt., 673.

Besides, Wrentmore was an engineer, a recognized expert. He could determine as well as the Hoover & Gamble Company, or any of its representatives, whether the machines furnished, installed and operating, were new or were worn and had been used. And Wrentmore's experience taught him that use does not necessarily impair machinery.

Again, there is no averment in the indictment that any of the guaranties specified in the contract was not completely fulfilled, except, possibly, as to the machinery being "new," assuming that the contract either provides or guarantees that the machinery shall be new. Does the contract so guarantee or provide? It is not so expressly stipulated in the contract, but the letter containing the bid, dated July 19, 1907, is, by reference thereto, incorporated into the contract. That letter reads:

"Complying with your *request* to quote on 120 spindle twine system, all new machinery to be manufactured by the Hoover & Gamble Company, I herewith submit as per their prices to me the following:"

Thereupon follows a statement of the prices for divers machines.

What the "request" was does not appear. And the interpretation of the letter seems to depend upon that. If the request was to bid for a contract to install machinery, all of which to be new, the contract provides for the installation of machinery all of which is to be new. But if that "request" was to bid for a contract to install machinery, only some of which was to be new and manufactured by the Hoover & Gamble Company, then the contract does not provide for machinery all of which was to be new, the clause "all new machinery to be manufactured by the Hoover & Gamble Company" being fairly susceptible of that interpretation. Besides, that the machinery should be new is not a part of the "guarantee," stated in the contract. On the other hand, that the machinery should be new seems to be industriously omitted from the "guarantee" in the contract.

A contract to deliver property of a certain description followed by the delivery of property not of that description, and by the collection of payment therefor as if it were of that description, does not constitute the offense of obtaining money by false pretences.

1 McClain C. L., Sec. 676.

Com. v. Haughey, 3 Met. (Ky.), 223.

The foregoing suggestion is based upon the indictment. The testimony of Daily & Armstrong at the hearing of the writ of *habeas corpus* in the District Court established that the oral understanding between the parties was that all the machinery was to be new.

j. Besides, it is manifest from the terms of the contract that the Board of Control relied upon the guaranties therein, as well as upon the judgment of Wrentmore, and not upon any representations of the makers. This fact, of itself, takes the case out of the statutes for obtaining money by false pretences.

State v. Chun, 19 Mo., 233.

State v. Butler, 47 Minn., 483.

Fay v. Com., 28 Grattan, 912.

Rex v. Codrington, 1 C. & P., 661.

It is true, as stated on page 10 of the brief for appellant, that the presence of a warranty in a contract does not, as a matter of law, prevent the maker thereof from being guilty of false pretences relative to the character or attributes of the thing sold. *Jackson v. The People*, 126 Ill., 139, is cited in support of said proposition by counsel for appellant from 18 N. E. Rep. That proposition is true when the contract is obtained by false representations, and when the vendee relied not upon the warranty, but upon the representations *previously* made by the defendant. In the *Jackson* case, *supra*, the horse had been sold and paid for by Hines before the contract and warranty was made out and delivered. At page 143 of the opinion of the Supreme Court in

Jackson v. The People, supra, Mr. Justice Shope, speaking for the entire court, says:

“It appears from the uncontradicted evidence of Hines, that the representations alleged, and which were permitted to be proved, were made, and the sale completed, including the payment of the money by Hines, and the receipt of it by the defendant, before the signing and delivery of said instrument. He testifies that after the contract had been completed, including the payment of the money, the defendant produced the instruments before set out, and asked the witness to sign the latter one of them, which he did. It is not shown that any fraud was used to induce the execution of said instrument by Hines; but it is evident that while Hines signed the paper prepared and produced by defendant, he was induced to make the contract of purchase relying upon the representations previously made by the defendant. He had told the defendant that he knew nothing about horses, and must rely upon his (defendant's) word as to the character and value of the horse.”

k. The contract is an executory contract, and therefore every statement in the bid on the part of Daily and in the contract on the part of the Hoover & Gamble Company, was a promise to do something in the future, which is not a representation of a past or present fact or condition, and hence is not a false pretence.

State v. Crowley and others, 41 Wis., 271, 281.

l. All the foregoing matter being fairly considered, it clearly appears that the indictment under consideration does not show the accomplishment of, or the intention to accomplish, a fraud and, there-

fore, does not charge the commission of an offense. It is the rule in Michigan and elsewhere that an indictment for obtaining property by false pretences must show an accomplished fraud.

The People v. Wakely, 62 Mich., 297, 302.

The People v. Behee, 90 Mich., 360.

1 McClain C. L., Sec. 680.

The State v. Matthews, 44 Kan., 596, 602.

The State v. Clark, 46 Kan., 65.

Where there is no actual intent to defraud, the crime of obtaining money by false pretences is not committed, although the money was obtained by false pretences. The mere obtaining of money by false pretences is, without more, an indifferent act. Such act is not criminal unless it is accompanied by the actual intent to defraud.

The People v. Getchell, 6 Mich., 496, 504.

The matters set forth in the indictments are consistent with the supposition that the machinery delivered at the prison plant in performance of the contract was superior to the machinery which, it is complained in the indictments, was not delivered, in respect to durability, efficiency, utility, finish and appearance; that is, in respect to everything except absolute newness, which the experience of mankind has taught is not desirable in machinery.

Read in the light of the entire record it is respectfully submitted that the indictment against Daily for obtaining the \$10,000 from the people of the State of Michigan was intended merely as a make-weight in procuring his extradition,—as a pretence to remove Daily to Michigan in order to try him

under the indictment for bribery, it being impossible, under the law, to effect his extradition for the offense, charged in the latter indictment.

m. At page 10 of the brief for appellant it is said:

“The indictment contains several counts, in one or more of which the nature of the pretences used is not averred, nor is such allegation necessary under the laws of the State of Michigan. (*People v. Winslow*, 39 Mich., 505; *People v. Dyer*, 79 Mich., 480; *People v. Butler*, 111 Mich., 483.)”

It is submitted in reply that the nature of the pretences is averred in every one of the three counts of the indictment, and that it is necessary under the laws of the State of Michigan, as well as under the laws of every state in the United States and of England, to set forth specifically in an indictment for obtaining property by false pretences the nature of the pretences used.

People v. Winslow, *supra*, was an indictment for *conspiracy* to obtain money by false pretences, in which indictment, as an overt act in pursuance of the conspiracy, it was averred the fraud was accomplished. The specific false pretences were not set forth in that part of the indictment which charges the conspiracy, nor in that part of the indictment which charges the overt act. But conspiracy in Michigan is complete without the doing of an overt act in pursuance of it. Therefore, so much of said indictment as charged the overt act was surplusage. In the opinion in the *Winslow* case it is said by Mr. Justice Cooley:

“It is not necessary in a case of this sort to set forth in the information the false pretences by which the offense was accomplished. (*People v. Clark*, 10 Mich., 310.)”

Evidently what the great justice meant by said sentence was that it was not necessary to specify the false pretences in an information for a conspiracy to obtain money by false pretences.

At common law a conspiracy was complete without the doing of an overt act in pursuance thereof. Yet it was common in an indictment therefor to allege such overt act and to disregard it on the trial.

People v. Clark, 10 Mich., *supra*, cited by Mr. Justice Cooley in support of his conclusion, was an information for *conspiracy* to obtain property by false pretences. The report of the *Winslow* case states simply that the respondent was found guilty without specifying whether he was found guilty of the conspiracy or the overt act.

People v. Dyer, *supra*, was an information for a conspiracy to falsely accuse a person of arson and of larceny.

People v. Butler, *supra*, was an information for *conspiracy* to obtain money by false pretences. It therefore clearly appears that the said *Winslow*, *Dyer* and *Butler* cases are not in point as regards an indictment for the substantive offense of obtaining property by false pretences.

Counsel for appellee has personally examined every case for obtaining property by false pretences reported in the decisions of the Supreme Court of Michigan, and in every one of said cases it appears that the indictment or information did set forth, or

profess to set forth, specifically the nature of the pretences used. Some of the cases examined by counsel for appellee are the following: *Enders v. The People*, 20 Mich., 233; *The People v. Wakely*, 62 Mich., 297; *The People v. Reynolds*, 71 Mich., 343; *The People v. Behee*, 90 Mich., 356; *The People v. Fitzgerald*, 92 Mich., 328; *The People v. Stockwell*, 135 Mich., 341. Moreover, at page 833 of Tiffany's Criminal Law, Howell's 4th Ed., the precedent of an information for false pretences under the statutes of Michigan is there set forth, which precedent shows that the false pretences must be specified. Tiffany's Criminal Law, above cited, is a treatise on the criminal law of the State of Michigan, with precedents of indictments and informations, etc.

Furthermore, the rules held in Michigan cases for obtaining property by false pretences are inconsistent with the supposition that it is not necessary in an indictment or information for that offense in Michigan to set forth specifically the nature of the pretences used.

In *The People v. Wakely*, *supra*, it is held that the pretences must be proved substantially as alleged. In *The People v. Behee* and *The People v. Reynolds*, *supra*, it is held that the false representation must be averred to be false *in fact*, and that without such showing no offense is charged in the indictment. And in the opinion in *Enders v. People*, *supra*, at page 240, it is said:

“Enders moved in arrest of judgment, after conviction, upon the insufficiency of the information. The objections are principally upon the ground that there is no sufficient connection

made out by allegations of *material facts*, between the pretences and the parting by Brandt with his property, and that *the materiality* of the pretences does not sufficiently appear.

“It is not disputed that the information does not conform at all to any proper standard of pleading. All systems of criminal, as well as of civil pleading, require that *such facts* be averred, as will, if admitted, lead to a necessary legal conclusion of liability or guilt. And if *the facts* so alleged would not of themselves require this inference, no allegation of guilt could help them out. The result must follow from *the facts*, and not from the pleader’s conclusions.”

From the foregoing extract from the opinion in the *Enders* case it appears that not only must the material facts which make up the false pretences be averred, but there must also be an averment showing a necessary connection between those material facts and the parting of the property by the prosecuting witness.

Again, the holding in the *Enders* case that the Michigan statute, providing that an indictment in the language of the statute is sufficient after verdict, does not dispense with such substantial averments as are required at common law, in effect decides that the false pretences must be specified in an indictment for obtaining property by false pretences, for that was the rule at common law. As, also, at common law it was not necessary to specify the false pretences in an indictment for conspiracy to obtain property by false pretences.

The text-writers all state that the false pretences must be specified in an indictment or information

for obtaining property by false pretences. 2 Bish. New Crim. Proc., Sec. 165; Whart. Cr. Pl. & Pr., 9th Ed., Sec. 221; Whart., Vol. 1, Prec. of Ind. and Pleas, p. 505; 1 McClain, C. L., Sec. 699.

A statute providing that the false pretences need not be specified is unconstitutional: *State v. Terry*, 109 Mo., 601; *State v. Benson*, 110 Mo., 18; *State v. Cameron*, 117 Mo., 371; *State v. Kain*, 118 Mo., 5. Constitutionality of Maryland statute, which so provides, is saved by provision that accused is *entitled*, upon demand, to a statement of particulars of the pretences and of the names of the witnesses. *State v. Blizzard*, 70 Md., 385.

F.

THE NATURE AND CHARACTER OF THE ACT WHICH MAY BECOME THE JURIDICAL CAUSE OF OBTAINING MONEY BY FALSE PRETENCES OR GIVING A SUM OF MONEY AS A BRIBE. APPLICATION OF CONTENTION TO THE INDICTMENT.

1. If the indictment for obtaining the \$10,000 by false pretences does not charge a crime, as contended on behalf of Daily, it is immaterial, so far as said indictment is concerned, whether what Daily did in Michigan on July 22, 1907, in November, 1907, and on April 7, 1908, was the juridical cause of any crime. But it is earnestly contended by counsel for Strassheim that said indictment does charge the crime of obtaining money by false pretences, and it is conceded on behalf of Daily that the other indictment does charge Daily with the crime of *giving* to Armstrong \$1,500 as a bribe. Hence, it remains to determine the nature and character of the act which may become the juridical cause of the crime

of obtaining money by false pretences, or of the crime of *giving* a sum of money as a bribe.

2. "A juridical cause" (of the crime charged) "is such an act, by a moral agent, as will apparently result, in the usual course of natural events, unless interrupted by circumstances independent of the actor, in the consequence" (the crime charged) "under investigation."

1 Whart. C. L. (10th ed.), Secs. 178, 154.

Such a juridical cause is clearly distinguishable from, and in the application of the law should be carefully distinguished from, all pre-existing conditions and all preliminary preparations for the commission of such crime, without all of which conditions and preparations the act which became the juridical cause would and could not have resulted in the crime. And such distinction should be carefully made for the reason that, although such pre-existing conditions and preparations do not enter into and become part of the juridical cause, yet they are, all and each, potentially present at the time and place when and where the juridical cause is set in motion.

3. The foregoing definition of a juridical cause by Wharton is exactly the definition of the overt act in a common law attempt to commit a crime. That is, the act which constitutes the juridical cause of a crime amounts to a common law attempt to commit the crime, if such act fails to produce the crime intended, because it was interrupted by circumstances independent of the actor.

1 Wharton Cl. L. (10th Ed.), Sec. 173, 179.

1 Bish, New Crim. L., Sec. 728.

The Michigan statute on criminal attempts is as follows:

“Every person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same, *when no express provision is made by law for the punishment of such attempt*, shall be punished as follows:

* * * * *

“3. If the offense so attempted to be committed is punishable by imprisonment in the state prison for a term *less than five years*, or by imprisonment *in the county jail*, or *by fine*, the offender convicted of such attempt shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars; but in no case shall the punishment by imprisonment exceed one-half of the greatest punishment which might have been inflicted if the offense so attempted had been committed.”

Vol. 3, Comp. L. Mich., 1897, Sec. 11784.

It is held in the Michigan cases that said Michigan statute defining an attempt was intended only to provide a punishment for what was already an attempt to commit a crime at common law.

People v. Youngs, 122 Mich., 392.

McDade v. People, 29 Mich., 50.

Harris v. People, 44 Mich., 305.

Brooks v. Cook, 102 Mich., 78.

The maxim *de minimis lex non curat* is peculiarly applicable to the crime of attempt.

1 Bish. New C. L., Secs. 726, 737, 739, 759, 762.

The offense of giving a bribe, charged in one of the indictments in this case, as well as the offenses of offering and promising a bribe (all three offenses being made punishable by the same Michigan statute), is punishable in the State prison for a term of not more than five years or by fine and imprisonment in the county jail.

Compiled Laws of Michigan, Sec. 11311.

Said Michigan statute will be found at page 8 of the brief for appellant.

4. The act which constitutes the juridical cause of a crime is an act which, "*of itself*," will apparently produce the resultant crime. This proposition is derived from Wharton's definition of the overt act in a common law attempt, to be found in the second paragraph, Sec. 180, 1 Whar. Cl. (10th Ed.). Those words, "*of itself*," are necessarily implied in every definition of a common law attempt to commit a crime, and therefore in the definition of the juridical cause of a crime. No act can be a *cause* which cannot, of itself, produce the result.

Hence, the only juridical cause of the obtaining of the \$10,000 by false pretences, or of the *giving* of the \$1,500 as a bribe, is such an act as, *of itself*, would apparently, or did actually, *of itself*, result in the obtaining of the \$10,000 by false pretences or in the *giving* of the \$1,500 as a bribe.

The foregoing views are supported by the decisions of two courts, wherein the question under consideration has been decided, with this apparent qualification, that the act of a person, while corporeally within the demanding state, in procuring another to commit a crime, who subsequently com-

mits it, was deemed, *arguendo*, in one of those cases, namely, the *Cook* case, the juridical cause of the resultant crime. This qualification is apparent only, for the procurement of a person to commit a crime is a juridical cause of the crime, committed in pursuance of the procurement.

In re Cook, 49 Fed. Rep., 833, 843, 844.

Re William Sultan, 115 N. C., 57.

5. In dealing with this proposition, in its application to the indictment for bribery, the word "give" should be emphasized, it is submitted, and for this reason,—the indictment for bribery annexed to the requisition charges only that Daily "did give" the \$1,500 as a bribe, whereas, the statute of Michigan, upon which it is based, makes it a crime to *give*, *offer* or *promise* a bribe, and the offer or promise of a bribe is not a minor offense included in the offense of the giving of a bribe.

And this is so, for the reason that the Michigan statute, under which the indictment for bribery in this case is drawn, has elevated to substantive offenses the only two acts which can be deemed to be of the nature of an attempt to bribe, namely, the acts of promising and offering a bribe. But if there is any other act than that of promising or offering a bribe, which would amount to an attempt to bribe, such act is not charged in the indictment for bribery in this case, and, besides, nothing done by Daily, while he was corporeally in Michigan, was such other act.

The foregoing propositions are all embraced in the Michigan statute on criminal attempts, in this.

the Michigan statute on criminal attempts merely provides for the punishment of an attempt to commit an offense prohibited by law, "when no express provision is made by law for the punishment of such attempt." Such "express provision" is, in effect, made in the statute, upon which the indictment for bribery in this case is framed, by the inclusion therein of the acts of offering and promising a bribe.

Moreover, at common law, the offer as also the promise, of a bribe, was charged in indictments and dealt with in all respects, *as substantive offenses*, exactly as they are dealt with in the Michigan statute, under which is drawn the indictment for bribery, annexed to the requisition. To promise or to offer a bribe was not at common law the crime of attempt, strictly speaking. To promise and to offer a bribe, it is true, are analogous to attempts, but they do not constitute such attempts, because neither the act of offering nor the act of promising a bribe was sufficiently proximate to the consummated act of giving the bribe; nor can either the offer or the promise of a bribe, *of itself*, cause the consummated offense, namely, the giving of a bribe. A bribe cannot be given unless it is accepted, and the offer or promise of the bribe will not necessarily, unless interrupted in the natural course of events, induce the acceptance of the bribe. Wharton so states the foregoing proposition in Whart. C. L. (10th Ed.), Sec. 179, beginning at the bottom of page 201. But while the promising and offering of a bribe are not, strictly speaking, attempts to bribe, they are endeavors to bribe, and although not amounting to attempts, they were punishable at the common law as definite and

substantive offenses because of their dangerous nature.

The common law seems to have made every step taken toward the consummation of the crime of bribery an independent, distinct and substantive offense.

1 Russell on Crimes (7th Eng. and 1st Can. Ed.), top of page 145.

1 Bish. New C. L., Secs. 767, 724, 435 (2).

2 Bish. New C. L., Sec. 88.

2 Bish. Dir. and Forms, p. 124.

All the precedents support the foregoing views and precedents rank next below decisions as authorities. The precedents for informations for promising or offering a bribe in 3 Chitty C. L., pages 683-689, 693-696, proceed on the theory that to promise or to offer or to propose to give a bribe is a substantive offense. True, the last precedent on page 696, concludes as for an attempt. But this conclusion like similar conclusions in indictments for perjury and murder are mere conclusions of law and therefore surplusage. On the same theory proceeds the information in *Rex v. Plymton*, 2 Ld. Raymond, 1377, for promising money to a member of a corporation in order to induce him to vote for the election of B. as Mayor.

The indictment might, without being duplicitous, have charged that Daily did promise, offer and give the bribe and it would be sustained by proof that he did any one of the three acts.

2 Bish. New Crim. Proc., Secs. 586, 434-436, 484 (2).

But proof that Daily gave the \$1,500, will not sustain a charge that he promised or offered the \$1,500; nor will proof that Daily promised or offered the \$1,500 sustain the charge of giving the \$1,500.

Nor under this indictment for giving the bribe can Daily be convicted of an attempt to bribe under the Michigan statute defining a criminal attempt by virtue of the Michigan statute, authorizing a conviction for an attempt under an indictment charging the consummated crime, which statute reads as follows:

“Upon an indictment for any offense, consisting of different degrees, as prescribed in this title, the jury may find the accused not guilty of the offense in the degree charged in the indictment, and may find such accused person guilty of any degree of such offense, inferior to that charged in the indictment, or of an attempt to commit such offense.”

3 Compiled Laws of Michigan, Sec. 11789.

That Michigan statute last above quoted which authorizes a conviction for an attempt under an indictment charging the consummated crime, must be construed and interpreted, together with the general statute of Michigan, which provides punishment for attempts to commit crime, hereinbefore quoted, and which also provides that it is applicable only to cases “when no express provision is made by law for the punishment of such attempt.”

In the statute under which is framed the indictment for bribery in this case, there is “express provision” made for the punishment of what, although

not strictly an attempt, is deemed to be such, namely, to promise or to offer a bribe. Therefore, said "express provision," as well as the statute, defining bribery, which makes it bribery to promise or offer a bribe, takes the offense of promising and offering a bribe entirely out of the two Michigan statutes, one of which defines and provides for the punishment of an attempt to commit a crime, the other of which authorizes a conviction for an attempt under an indictment charging the consummated offense.

Furthermore, under the indictment for bribery in this case, Daily could not be convicted of promising or offering a bribe, because *the facts* of promising and offering a bribe are not charged in the indictment. In Michigan the rule is strictly enforced that an indictment or information for a statutory offense, must contain averments of *every element enumerated in the statute* as combining to create the offense, or it is *bad*.

Hall v. The People, 43 Mich., 419.

The People v. Chappel, 27 Mich., 486.

Shannon v. The People, 5 Mich., 71.

Koster v. The People, 8 Mich., 431.

Chapman v. The People, 39 Mich., 357.

Enders v. The People, 20 Mich., 233.

The People v. Olmstead, 30 Mich., 431.

In *The People v. Olmstead*, *supra*, the information charged that the defendant did "feloniously, wilfully and wickedly kill and slay contrary to the statute in such case made and provided." It was held that the information was good under the Mich-

igan statute. But *the facts* of the case were that the defendant was prosecuted under a statute which provided in substance that every person "who shall administer to any woman pregnant with a quick child any medicine, drug or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, etc., shall in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter." The judgment against Olmstead was reversed because, although the information was *per se* sufficient, *yet it did not apprise Olmstead of the facts* which were introduced in evidence against him. The Supreme Court say, in the opinion at page 439:

"Nothing could inform him of this statutory charge, except allegations conforming to the statute. *This we think he was entitled to have spread out upon the accusation.* Without them he was liable to be surprised at the trial and could not be expected to prepare for it.

"We are not prepared to hold this information bad upon its face, for we are disposed to think, and it was practically admitted on the argument, *that it may apply to the ordinary homicides by assault.* It was not therefore until the evidence came in that it was made certain the case was different.

* * * * *

"It must be certified to the court below that the verdict should be set aside, and that no further proceedings on this charge should be had under this information as it stands."

In *Chapman v. The People, supra*, at page 359, the court say:

"As has been frequently remarked, the rules of pleading are formed on the supposition that accused persons may be innocent, and they cannot be construed except in that light. They are assumed as necessarily containing, according to the constitutional requisition, enough to inform an innocent man *of the facts* intended to be shown against him.

* * * * *

"Making all due allowance for the averments which at common law need not be strictly made out, the offense must not at any rate be misdescribed, nor can the indictment omit anything essential to its description. *Enders v. People*, 20 Mich., 233; *Merwin v. People*, 26 Mich., 298."

The charge of an attempt to commit a crime is not sustained by proof of the commission of the crime, and this is so, because an attempt imports a failure to accomplish the intended result.

Graham v. The People, 181 Ill., 477, 488-491.

The charge in the indictment for bribery is, and a conviction can be had under it only, for the giving of the bribe.

If an offense may be committed in either of various modes, the party charged is entitled to have that mode stated in the indictment which is proved at the trial; and when one mode is stated and proof of the commission of the offense by a different mode is offered, such evidence is incompetent by reason of variance.

Com. v. Richardson, 126 Mass., 34, 39, 40.

Randle v. State, 12 Tex. App., 250.

People v. Fulle, 12 Abb. N. C., 196.

To *offer* a bribe within the meaning of the statute, upon which the indictment for bribery in this case is framed, means nothing short of presenting the bribe for acceptance or rejection.

In *State v. Harker*, 4 Harr. (Del.), 559, it became necessary for the court to discriminate between the words "give," "offer," "promise" and "procure," as used in the bribery laws of Delaware; and it was held, Booth, C. J., speaking for the court:

"To *give* a reward by way of bribe, is to pass or deliver the reward or bribe immediately to another; to *offer* it, is to present it for acceptance or rejection; to *promise* it, is to make a declaration or engagement that it shall be given; to *procure* it, is to obtain it from others."

State v. Harker, supra, is the only case found by counsel for appellee wherein it was necessary for the court to distinguish the words "give," "offer" and "promise" in a bribery statute.

In *O'Brien v. State*, 6 Tex. App., 665, it was held that any expression of an ability to produce a bribe, as a gift to an officer to induce him to release a prisoner, is all that is necessary to perfect the crime of offering the bribe, charged in the indictment. But there in that case the statute upon which the indictment was framed did not create the offense of *promising* a bribe. That statute as quoted in the opinion at page 67 reads as follows:

"If any person shall bribe, or offer to bribe, any sheriff or other peace officer," etc.

In that case it was necessary to distinguish merely between the giving and the offering of a bribe within the meaning of the statute upon which the indict-

ment was framed. It was not necessary to distinguish a promise from an offer of a bribe.

6. Clearly, not one or all of the acts, claimed to have been done by Daily, while he was corporeally in Michigan, amount to and constitute the juridical cause of obtaining (that is, an attempt to obtain) the \$10,000 by false pretences, or the juridical cause of the giving to Armstrong of the \$1,500 as a bribe. No act short of the making of the false representation, if any, could possibly be the juridical cause of the obtaining of the \$10,000 by false pretences.

The talking with the members of the Board of Control at their meeting in Detroit, Michigan, on July 22, 1907, at which time nothing was done by Daily except to receive information that his bid for the Hoover & Gamble Company had been accepted; the conversation with Armstrong in November, 1907, about the word "new" in the contract (assuming that conversation occurred at Jackson, Michigan); what was done at Jackson, Michigan, on November 14, 1907, by Daily in the examination of the sisal warehouse and in deciding to relieve its congested condition by stopping temporarily the shipment to Jackson of machinery and sisal; and the examination of the plant in operation on April 7, 1908, by Daily and Eminger, do not, singly or collectively, constitute the juridical cause of obtaining the \$10,000 by false pretences, or the juridical cause of the giving of the \$1,500 to Armstrong, or even of promising or offering to Armstrong any money as a bribe.

Making the false representation might naturally of itself result in the obtaining of the \$10,000. But Daily, while in Michigan, made no false rep-

resentation, nor, in fact, outside of the indictment, is there any pretence whatever that any person made what is claimed or pretended to be a false representation.

And no possible act other than the actual tender of the \$1,500 followed immediately by the acceptance of the same by Armstrong, or the actual procuring, while Daily was corporeally in Michigan, of some other person to tender the \$1,500, followed by its acceptance by Armstrong, could possibly constitute the juridical act of the giving of the bribe to Armstrong. And the evidence is conclusive that Daily did not in person at any place give the \$1,500 to Armstrong, and there is no evidence nor any claim that Daily, while corporeally in Michigan, procured another person to give Armstrong the \$1,500. On the other hand, the only claim on behalf of appellant is that appellee, while in Chicago, Illinois, sent his son into Michigan to give Armstrong the \$1,500; and this claim is not supported by a scintilla of evidence. It is supported merely by a statement in the brief for appellant at page 3, volunteered by the opposing counsel, and the offer of Mr. Thomas Barkworth, counsel for appellant at the hearing, to prove by Daily on his cross examination that he knew of his son going to Jackson, Michigan, on May 13, 1908.

The conversation between Daily and Armstrong respecting the word "new" in the contract, irrespective of the place where it occurred, was not the promise or the offer of a bribe, under any definition of those words.

In that conversation as it is related by Armstrong, Daily said that Eminger had objected to the word

"new" in the contract, and was afraid that they, the Hoover & Gamble Company, would have trouble with the consulting engineer in regard to the matter, and Armstrong replied that he did not think that they would have any trouble with him. That conversation, in the light of the rest of Armstrong's testimony, suggests the inference that the Hoover & Gamble Company anticipated trouble about the matter if all the machinery was not new. But it does not tend to show the alleged bribery or the obtaining of the \$10,000 by false pretences. And in this connection it is to be remembered that, in response to questions put to him by Judge Landis, Armstrong answered that he never had any talk with Daily in the State of Michigan at all respecting the present of a thousand dollars or anything in the way of any irregularity in connection with the installation of the machinery, unless the foregoing conversation occurred in Michigan. (Trans. Rec., 143, 144.)

It may be worthy of remark in this aspect of the case that the crime of bribery cannot, like murder, larceny or obtaining money by false pretences, be committed by the sole act of the criminal. On the other hand, in this respect the crime of bribery is like incest, adultery, dueling, giving a rebate or concession. The crime of bribery is impossible without the concurrence of the bribe taker and the bribe giver. In this aspect of the case the law is that a mere promise to give, or an offer to give or an effort of any kind to persuade and produce a state of mind consenting to the acceptance of a bribe, is not a common law attempt to commit the crime of, or the juridical cause of, the giving of a bribe.

Whart. C. L. (10th Ed.), Sec. 179.

Cox v. The People, 82 Ill., 191.

Therefore, to hold that said talk about the Daily-Eminger conversation concerning the word "new" in the contract was a ratification of the alleged original agreement in Chicago between Daily and Armstrong (and it is contended further along there was no such agreement), and, consequently, a renewal of the promise to give Armstrong a bribe, and that such promise was a juridical cause of the actual giving of the \$1,500 would, in fact, be a decision that Daily stands charged in Michigan with the substantive crime of promising to give Armstrong a bribe, which is not charged in either of the indictments annexed to the requisition.

The crime charged in the indictment of giving a bribe may be sustained without any evidence of a promise so to do. For example, A., an official, says to B.: "Give me \$1,500 and I will vote for you." B. thereupon hands A. the \$1,500.

Nor can the agreement between Daily and Armstrong, the one to give and the other to accept a bribe, be deemed in law a juridical cause of the final giving of the bribe. That agreement, "of itself," could not be the cause of any physical act, as before stated. Of course, Daily and Armstrong might, in fact, carry out that agreement, but the carrying out of that agreement would be another act than the agreement itself, and a juridical cause, as we have seen, is one that will, of itself, result, in the usual course of natural events, if uninterrupted by circumstances independent of the actor, in the commission of the crime intended to be committed.

7. Nor did the agreement between Daily and Armstrong, the one to give and the other to accept, a bribe, constitute a conspiracy to accept, or a conspiracy to give a bribe. An indictment for conspiracy does not lie for an agreement between two persons, the one to give and the other to accept a bribe, for the reason that the crime of bribery itself cannot be committed without such an agreement.

2 Whart. C. L. (10th Ed.), Sec. 1339.

U. S. v. Dietrich et al., 126 Fed. Rep., 664.

U. S. v. N. Y. Cent. & H. R. R. Co., 146 Fed. Rep., 298, 302-304.

8. The testimony given by Armstrong as to the conversation between him and Daily concerning the word "new" in the contract fails to prove that said conversation occurred between Daily and Armstrong, while Daily was at Jackson, Michigan, or at any other place in Michigan on November 14, 1907, or on any other day. The only testimony as to where said conversation occurred, if ever, was given by Armstrong. Armstrong's testimony on that point is that said conversation occurred either in Chicago, Illinois, or in Jackson, Michigan, or over the telephone (meaning over the telephone between Jackson, Michigan, and Chicago, Illinois, Armstrong being in Jackson and Daily in Chicago), but to the best of Armstrong's recollection, in Jackson, Michigan, but that he wouldn't be positive, that he didn't remember. That testimony leaves in considerable doubt the place where, if ever, said conversation occurred and does not cast upon Daily, it is submitted, the burden of showing that it did not occur at some place

in Michigan, while Daily was corporeally within the State of Michigan.

Daily was not asked, on his direct or cross examination, whether any conversation about the word "new" in the contract had occurred. There was no evidence in the record of such conversation until Armstrong gave his testimony. But in effect Daily on his cross examination denied that such conversation ever occurred by the following testimony:

"Mr. Thomas Barkworth: At some time or other, Mr. Daily, Mr. Allan Armstrong knew of the substitution of that machinery, did he not?"

"Daily: Not from me.

"Mr. Thomas Barkworth: I asked you whether or not Mr. Allan Armstrong knew of the substitution of the Ayton, Canada, machinery some time or other during the completion of that contract.

"Daily: I don't know that he ever knew it."
(Trans. Rec., 140.)

G.

THE DISTINCTION BETWEEN AN ACT, WHICH IS THE JURIDICAL CAUSE OF A CRIME CHARGED, AND AN ACT WHICH IS AN OVERT ACT IN FURTHERANCE OF A CONSPIRACY TO COMMIT SAID CRIME.

1. Said distinction is clearly made by the Supreme Court of Michigan in its opinion in *People v. Youngs*, 122 Mich., *supra*. In that case two questions were presented: Whether the Michigan statute providing a penalty for an attempt to commit a crime *changed* the common law rule as to what constitutes such an attempt and whether the facts stated in the indictment showed an attempt as defined at common law. The court answered both of these questions

in the negative and held that an attempt under that Michigan statute was an attempt at the common law, namely, that an act to constitute a criminal attempt must be one immediately and directly tending to the execution of the principal crime and committed by the prisoner under such circumstances that he had the power of carrying his intentions into execution.

In the opinion in *People v. Youngs*, *supra*, the following language of the court in *Reg. v. Taylor*, 1 F. & F., 511, 512, which was an indictment for an attempt to set fire to a stack of corn, is quoted with approval:

“If two persons were to agree to commit a felony, and one of them were, in execution of his share in the transaction, to purchase an instrument to be used in the course of the felonious act, that would be a sufficient overt act in an indictment for conspiracy, but not in an indictment of this nature.”

It appears, therefore, that an act which is merely preparatory to the execution of a crime is an act which may be an overt act in furtherance of a conspiracy to commit that crime.

But, it is not to be overlooked that no act is such an overt act, unless it has a tendency at any rate to carry out the object of the conspiracy or in some way tends to make it effectual.

U. S. v. McLaughlin, 169 Fed. Rep., 302, 307.

U. S. v. Kissel, 173 Fed. Rep., 823, 827.

U. S. v. Black (C. C. A.), 160 Fed. Rep., 431.

Measured by said rule, it is submitted, that in no possible aspect of the case can Daily's trip to Detroit on July 22, 1907, to ascertain whether the Board of Control accepted his second bid or Daily's trip to Jackson on November 14, 1907, for the purpose of relieving, and his decision to relieve (by stopping temporarily the further shipment to Jackson of machinery and sisal) the congested condition of the sisal warehouse in the prison plant, or Daily's alleged conversation with Armstrong in November, 1907, about the word "new" in the contract (wherever that conversation occurred) or the trip of Daily to Jackson on April 6 and 7, 1908, to observe the working of the machinery installed in said plant, be deemed an overt act in pursuance of any conspiracy to obtain the \$10,000 by the supposed false pretences alleged.

2. Counsel for appellant do not discuss, it is submitted, the vital question involved in this case. They assume that question in its two-fold aspect. They state at page 14 of their brief as a fact (whereas the contrary is established by the evidence in the record as is hereinbefore pointed out) that Daily in Detroit on July 22, 1907, tendered the Hoover & Gamble bid to the Board of Control. Thereupon they state their contention in a metaphor in this way: "thus setting in motion the *machinery* by which the result was ultimately to be accomplished."

Reasoning by metaphor is very impressive but always dangerous, generally misleading and commonly involves a conclusion to which there are exceptions. If the counsel for appellant had carefully defined what is such "machinery" as is within the rea-

son of the law and applicable to the case at bar, their metaphor might have been of use to the court and opposing counsel; but without any definition of such "machinery" their contention will be useless to the court and leaves opposing counsel without a clearly conceived proposition to concede or deny or to qualify.

Let us pursue that metaphor a little farther. What does the word "machinery" mean in that metaphor? What is its full legal import? Mr. Justice Jenkins, in his scholarly and learned opinion in the *Cook* case, cited in the brief for each party, answers that question. Mr. Justice Jenkins uses the same metaphor in that opinion, but he accompanies it with such a discussion of the fundamental principles of law applicable to the case, submitted to him for decision, as to make clear that what he meant (and that what is meant in the law) by "machinery," in that metaphor, is "machinery" which, when once set in motion by the criminal, *of itself*, in the way in which the particular machinery usually operates, if not stopped, will produce the crime charged: that is, "machinery" in that metaphor means what has heretofore been shown to be an act which is the juridical cause of the crime charged. Could the "machinery," which, counsel for appellant specifies, to-wit, the bid, of itself, if uninterrupted, in the usual course of events, operate to obtain the \$10,000 by false pretences, or to give the \$1,500 as a bribe?

3. Again, if there were in existence between Daily and Armstrong on July 22, 1907, a conspiracy to accomplish any unlawful purpose and any act, done by Daily on that day at Detroit, were an overt

(if he is charged in either indictment with a crime) upon which exclusively rests his right to be released from the custody of Strassheim, sheriff, under and by virtue of the extradition warrant.

H.

THERE IS NO CHARGE OF CONSPIRACY IN EITHER OF THE INDICTMENTS, ANNEXED TO THE REQUISITION, NOR IS ANY CONSPIRACY TO COMMIT EITHER OF THE CRIMES, CLAIMED TO BE CHARGED IN SAID INDICTMENTS, ESTABLISHED BY THE EVIDENCE.

Conspiracy is a species of the crime of attempt, and as such, the maxim *de minimis lex non curat* is peculiarly applicable thereto.

2 Bish. New C. L., Secs. 191-195.

1 Bish. New C. L., Sec. 739.

1. The allegations in the two indictments, annexed to the requisition, as to conspiracy, are immaterial allegations. At most they are merely evidentiary facts. Such allegations do not in form or substance set forth the elements of a conspiracy and would not sustain a verdict for conspiracy. As regards a charge of conspiracy, those two indictments lack averments of unlawful or criminal means to accomplish a lawful object or of an unlawful or criminal object to be accomplished, and also, of the name of the party to be defrauded and of what said party was to be defrauded and of whose property that party was to be defrauded. All the averments in the two indictments in this respect are mere surplusage and require no answer from Daily.

The material allegations in an indictment are those averments which set forth charges that are

contrary to law and make up the offense, and not those which charge things not contrary to law, however morally wrong they may be and which are not necessary to constitute the offense. A plea of not guilty to these indictments would not put in issue the accusations and complaints, or, rather, the ob-jurgatory verbiage, about conspiracy. *Ex parte Houghton*, 8 Fed. Rep., 897, 901. Moreover, as it has hereinbefore been pointed out, an indictment for conspiracy to accept a bribe or to give a bribe does not lie, because of the alleged agreement between Daily and Armstrong, one to give, the other to accept a bribe.

2. Nor is any understanding, crime or combination, amounting to a criminal conspiracy, shown by the evidence. Excepting the affidavit of Armstrong, annexed to the requisition, there is no evidence in the record at all tending to show that Daily and Armstrong entered into an agreement, whereby Daily was to give Armstrong a sum of money, and Armstrong was to accept that sum of money, upon the understanding between them, that in the performance of the contract, if the contract was awarded to the Hoover & Gamble Company, the Ayton machinery was to be used, and Armstrong was to remain silent respecting said use and to deal with the Ayton machinery just as if it were all entirely new.

And such an agreement, if any such existed, does not amount to a criminal conspiracy, because it was not an agreement to accomplish a lawful object by unlawful or criminal means, or to accomplish an unlawful or criminal object. The word "unlawful" in the definition of conspiracy embraces not every

illegal act, but only such acts, not criminal, as are violative of the rights of individuals and for which the civil law will afford a remedy to the injured party, and will at the same time and by the same process punish the offender for the wrong and outrage done to society by giving exemplary damages beyond the damages actually proved.

Smith et al. v. The People, 25 Ill., 9, 14.

Whether such an agreement, if any such existed, between Daily and Armstrong embraced an unlawful act (barring the promise to bribe Armstrong involved in the agreement which must be excluded, as hereinbefore shown), depends altogether upon the durability and efficiency of the Ayton machinery. The description of said machinery in both indictments, namely, that it was machinery which was not new but which had been worn and used and was second-hand, does not show said machinery to be machinery which was less durable and less efficient than new machinery. Therefore, in a civil action on the part of the Board of Control against the Hoover & Gamble Company, the Board of Control would not be entitled to punitive damages because the Ayton machinery had been used, and was not new machinery and was not machinery which had never been used. Nor would the actual representation before any part of the contract price was paid to the Hoover & Gamble Company, to the effect that the machinery was all new, amount to a false representation, as is hereinbefore shown.

It is clear, therefore, that the agreement, if any, between Daily and Armstrong, did not amount to a

conspiracy to obtain money by unlawful means or to accomplish an unlawful object or to commit a crime, to-wit, to obtain money by false pretences.

Moreover, said agreement does not amount to a conspiracy to cheat and defraud the people of the State of Michigan by unlawful means *other than by false pretences*, for the reasons hereinbefore set forth.

To constitute an indictable conspiracy in Michigan there must be a combination of two or more persons to commit some act known as an offense at common law, or that has been declared such by statute, or an act not in itself unlawful by unlawful means. And in Michigan an indictment for conspiracy to accomplish an unlawful object or a lawful object by unlawful means (unlawful being distinguished from criminal) does not set forth every element of an offense, unless the facts averred show either the object or the means to be unlawful. That is, an indictment in Michigan charging that the defendants conspired *to cheat and defraud* a certain person of his property, etc., without showing by specific facts alleged that the means to be used were unlawful, does not charge an offense even on motion in arrest. The words "cheat and defraud" do not necessarily import a criminal or an *unlawful* act, within the meaning of the word "unlawful" in the definition of conspiracy, under the rule held in Michigan, which follows the rule that always obtained in Massachusetts.

Alderman v. People, 4 Mich., 414.

act in furtherance of that conspiracy, the operative presumption of the law is, not that Daily continued, but that he ceased, to be a member of that conspiracy. The presumption of continuance being a presumption of law is overcome by the presumption of innocence. *Dalton v. U. S.* (C. C. A.), 154 Fed. Rep., 461, 463. Several instances, where it was held that the presumption of innocence overcomes the presumption of continuance, will be found at page 430, Lawson on Pres. Ev.

And this effect of the presumption of innocence is strengthened by the fact that at no time did Daily, in person or by an agent, represent to any person or body of men that the machinery was new for the purpose of collecting payment for the machinery. This fact should be considered, for the theory of the people of the State of Michigan, embodied in the two indictments annexed to the requisition and in the contentions for appellant, is that said alleged conspiracy ripened into the substantive crimes of bribery and obtaining the \$10,000 by false pretences. There is always a *locus poenitentiae*. Daily absolved himself from the guilt of any substantive crime committed in pursuance of any conspiracy, of which, it is asserted he was a member, that is from the guilt of anything except the conspiracy itself, which is not charged, provided he withdrew himself from the conspiracy before the act, if any, which was the juridical cause of such substantive crime, was committed by some one or more of the conspirators, no matter how many overt acts in pursuance of the conspiracy had been committed before the committing of such act as was such juridical cause. This

rule of law, which runs through our jurisprudence, is followed by the courts and has been followed by the Supreme Court of Michigan. If the criminal purpose is abandoned before enough is done to constitute an attempt, guilt is not incurred. Until at least an attempt has been committed there is *locus poenitentiae*.

People v. Lilley, 43 Mich., 521.

Pinkard v. State, 30 Ga., 757.

State v. Allen, 47 Conn., 121, 129.

Shannon & Nugent v. Com., 14 Pa. St., 226, 228.

Harris v. State, 15 Tex. App., 629.

Rex v. Edmeads, 3 C. & P., 390.

1 Bish. New C. L., Sec. 733 (2).

1 McClain C. L., Sec. 224.

And in the absence of evidence to the contrary, the presumption of innocence applied in this case in this court means that Daily did so withdraw himself from any conspiracy, of which it may be held that he was a member. And the presumption of innocence is applicable in this court, it is submitted, not as evidence of his innocence of any crime with which he may be charged in either of the indictments, but as evidence of his innocence of any act (not an ingredient of the crime with which he may be charged in either of the indictments) which is relied upon as an act done by him in Michigan for the purpose of connecting him with the commission of any crime charged or any conspiracy which it may be held ripened into such crime. In this *habeas corpus* proceeding said last described act is the ultimate fact

It is clear, therefore, that no conspiracy is charged in the indictments to obtain money by false pretences or by any unlawful means. And the alleged agreement to give and to accept a bribe, as hereinbefore shown, does not constitute a conspiracy.

3. But assume that the existence of a conspiracy between Daily and Armstrong to substitute the Ayton machinery is charged and has been proved. The next question that arises is, When was such conspiracy formed? When did Daily and Armstrong agree so to do? On this point there is no evidence in the record except this, that it may be gathered from the indictment that the alleged conspiracy, if any, was formed before the return of the indictment.

The allegations of such conspiracy in the indictments, assigning to that conspiracy the date stated in the margin of either indictment, to-wit, the March Term, 1909, of the Circuit Court of Jackson County, Michigan, or the date which can be gathered from the fourth count of the indictment for bribery, should be wholly disregarded as allegations of evidentiary facts, which the grand jury did not have the jurisdiction to find, especially as to the indictment for bribery, for the reason that what is alleged therein is wholly irrelevant to the charge of giving the \$1,500 as a bribe. And as to the evidence on this point, it is submitted that Armstrong does not state in his affidavit or in his testimony that he gave Daily to understand that he would accept the present and connive at the substitution of the machinery, on the day on which the present was first offered, that is, within ten days before July 22,

1907, or at any time on or before July 22, 1907, or November 14, 1907, or April 7, 1908, or at any other time.

I.

LEADING CASES HOLDING ADVANCE STAGES OF PREPARATION NOT TO AMOUNT TO AN ATTEMPT TO COMMIT A CRIME, AND, THEREFORE, NOT TO BE THE JURIDICAL CAUSE OF A CRIME.

The People v. Murray, 14 Cal., 159;
United States v. Stephens, 12 Fed. Rep., 52;
Reg. v. Williams & Rees, 1 Den. C. C., 39;
Reg. v. Meredith, 8 C. & P., 589, 590;
Patrick et al. v. The People, 132 Ill., 529,
533-535;
Hicks v. Com., 86 Va., 223.

Respectfully submitted.

WILLIAM S. FORREST,
Counsel for Milton Daily, Appellee.

APR 3 1911

JAMES H. McKENNEY,

CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 638.

CHRISTOPHER STRASSHEIM, SHERIFF OF COOK
COUNTY, ILLINOIS, APPELLANT,

vs.

MILTON DAILY, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF ILLINOIS.

REPLY BRIEF FOR APPELLANT.

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REPLY BRIEF FOR APPELLANT.

We have given as careful attention to the elaborate brief filed by defendant's counsel as the short time elapsing since its receipt permitted.

We differ, radically and fundamentally, in our conceptions of the issues involved.

Our view of the case excludes very much of the discussion of abstruse principles of criminal law to which counsel for defendant gives so much attention.

If we have correctly interpreted the decisions of the court governing the proceeding at bar, the scope of judicial inquiry is very much narrower than the field of counsel's argument.

So lately as the case of *Appleyard v. Massachusetts*, 203 U. S. 222, decided in 1906, this Court determined the questions at issue and restricted the extent of judicial review in the following language: Approving *Roberts v. Reilly*, 116 U. S. 80.

"It must appear, therefore, to the Governor of the State to whom such a demand is presented, before he can lawfully comply with it, first, that the person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled, by an indictment or an affidavit, certified as authentic by the Governor of the State making the demand; and, second, that the person demanded is a fugitive from the justice of the State, the executive authority of which makes the demand. The first of these prerequisites is a question of law, and is always open upon the face of the papers to judicial inquiry, on an application for a discharge under a writ of habeas corpus. The second is a question of fact, which the Governor of the State upon whom the demand is made must decide, upon such evidence as he may deem satisfactory. How far his decision may be reviewed judicially in proceedings in habeas corpus, or whether it is not conclusive, are questions not settled by harmonious judicial decisions, nor by any authoritative judgment of this court. It is conceded that the determination of the fact by the Executive of the State in issuing his warrant of arrest, upon a demand made on that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overthrown by contrary proof."

Since that time the following cases bearing upon the subject have been decided in this court.

McNichols v. Pease, 207 U. S. 100.

So far as that case deals with any question pending here it defines the right of the defendant as follows:

"One arrested and held as a fugitive from justice is entitled, of right, upon habeas corpus, to question the lawfulness of his arrest and imprisonment, showing by competent evidence, as a ground for his release, that he was not, within the meaning of the Constitution and laws of the United States, a fugitive

from the justice of the demanding State, and thereby overcoming the presumption to the contrary arising from the face of an extradition warrant."

Upon the question of the date fixed in the requisition papers for the commission of the offense the opinion says:

"If the authorities of Wisconsin were bound by the date named in the requisition papers, which we do not concede (1 Pomeroy's Archbold's Cr. Pr. & Pl. 363) still the record contains no such case as is contended for by the accused."

Bassing v. Cady, 208 U. S. 386.

This case holds that unless as a result of a first extradition the accused has been placed in legal jeopardy, such first extradition has no effect upon a second indictment and extradition for the same offense, even though the defendant was permitted after such first extradition to leave the demanding state without objection by its authorities.

Pierce v. Creecy, 210 U. S. 387.

This case was fully discussed in our original brief.

Compton v. Alabama, 214 U. S. 1.

This case is also cited in our main brief.

Marbles v. Creecy, 215 U. S. 63.

So far as this case affects at all the one at bar its importance rests upon two principles laid down by the court as follows: Alluding to the hearing before the Governor, the opinion says:

"He was, no doubt, at liberty to hear independent evidence showing that the act with which the accused was charged by indictment was not made criminal by the laws of Mississippi and that he was not a fugitive from justice. No such proof appears to have been offered to the Governor or to the court

below. But the official documents, reasonably interpreted, made a *prima facie* case against the accused as an alleged fugitive from justice and authorized that Executive to issue his warrant of arrest as requested by the Governor of Mississippi."

And at page 69 the following is found:

"The court that heard the application for discharge on writ of habeas corpus was entitled to assume, as no doubt the Governor of Missouri assumed, that the State demanding the arrest and delivery of the accused had no other object in view than to enforce its laws, and that it would, by its constituted tribunals, officers and representatives, see to it not only that he was legally tried, without any reference to his race, but would be adequately protected while in the State's custody against the illegal action of those who might interfere to prevent the regular and orderly administration of justice."

Reviewing the doctrine of the various cases out of which has developed the present status of the law we contend with confidence that, except as hereafter noticed, the lengthy discussion of defendant's counsel is not pertinent to the issues of the pending controversy.

No precedent has been cited upon the main argument tendered by our former brief save as counsel seeks to deduce from

Hyatt v. Corkran, 188 U. S. 691

the overruling of decisions cited by us relative to the non-conclusive character of the averment of the indictments as to the time of the alleged offenses.

We submit that neither decision nor dicta in that opinion supports the conclusion of defendant's counsel as to its effect.

The stipulation involved in the submission of that case was interpreted as follows:

"In the case before us it is conceded that the relator was not in the State at the various times when it is alleged in the

indictments the crimes were committed, nor until eight days after the time when the last one is alleged to have been committed. That the prosecution on the trial of such an indictment need not prove with exactness the commission of the crime at the very time alleged in the indictment is immaterial. The indictments in this case named certain dates as the times when the crimes were committed, and where in a proceeding like this there is no proof or offer of proof to show that the crimes were in truth committed on some other day than those named in the indictments, and that the dates therein named were erroneously stated, it is sufficient for the party charged to show that he was not in the State at the times named in the indictments, and when those facts are proved so that there is no dispute in regard to them, and there is no claim of any error in the dates named in the indictments, the facts so proved are sufficient to show that the person was not in the State when the crimes were, if ever, committed."

That case, as is shown by the quotation from the opinion in our former brief was treated as one of claimed constructive presence and his absence from the State at the time of the commission of the offense was deemed to be conceded by the stipulation.

We further submit that not only will no authoritative case be found where the quality of the participation of the accused has been considered on the hearing on habeas corpus, but that such consideration would be out of harmony with all the decisions of this Court on the subject.

Yet, this is precisely what is attempted by the brief of defendant's counsel. At great length he seeks to show that what defendant did on his various visits to Michigan did not amount to a "^{perjudicial} ~~judicial~~ cause" of the charged offense, of bribery or false pretenses. This showing is based on the alleged absence of testimony clearly within the power of the Michigan authorities to produce, when the question of the culpability of the accused shall be properly before the tribunals of that State for determination.

In view of the admittedly proper indictment for the crime of bribery all other questions become unimportant, unless the argument of defendant's counsel relative to the so-called "judicial cause" presents an insuperable objection. We will, therefore, while urging its lack of pertinence to the issues raised here examine the effect of the principle thus asserted.

The crime of bribery consists of the customary criminal steps which considered separately may be technically either a conspiracy, an attempt, an offer, a promise or a gift and punishable in accordance with the charge made.

People v. Salisbury, 134 Mich. 537.

People v. McGarry, 136 Mich. 316.

While the conspiracy does not necessarily merge in the felony so as to bar a separate prosecution it is plainly a part of the selected machinery by which the corrupt result is to be procured and hence becomes an important evidentiary fact.

In like manner the necessary steps to carry into effect the plan by which the result is to be accomplished become, successively, constituent parts of the completed purpose and collectively constitute the crime charged.

And an indictment for the completed offense necessarily covers every one of these successive steps and so far as the criminality of any participation of the defendant is concerned it must be determined on the same principle as though separate indictments had been presented for each constituent element.

The indictment for bribery in the present case sets out fully the circumstances attending the conspiracy out of which arose the final giving of the bribe, the date thereof, and the means whereby the conspiracy became effective, and the presence of the accused in Michigan is wholly between the date of the alleged conspiracy and the final giving of the bribe.

So that unless the court holds that we are confined to the strict date of the manual transmission of the money, it

would seem that the time of the commission of the crime would certainly extend to these occasions.

We are not prepared to agree with the application of the rule of substantive offenses as sought to be applied by defendant's counsel to the facts at bar. We agree with him that because of their dangerous nature, attempts at bribery have been made as a matter of punitive consequences, separate felonies, but this in no wise changes their evidentiary character in relation to each other. They are precisely in their relative effect analagous to the making of the false representations and the payment of the money in a case of obtaining money by false pretenses, but it will not be denied that in the latter case when the offense is completed it may be laid as of either date and the cases cited in our main brief show clearly that the technical division of these elements do not affect at all their character as constituent parts of the crime.

Neither do we accede to the argument of defendant's brief that the juridicial cause is an act which of itself will apparently produce the resultant crime. The making of a false pretense is not in that sense a juridicial cause of the obtaining of the money, yet it directly and immediately tends to the execution of the principal crime and is as we have shown, recognized as a constituent part thereof. The only reasonable way of treating the successive steps which lead from the preliminary conspiracy to the consummated crime is to treat their relation to the purpose and the result as a necessary factor in carrying out such purpose and reaching such result. The refinement of criminal pleading ought not to stand in the way of such recognition and we submit that the reason of no rule affecting the rights of the defendant prevents such treatment. But we further contend that the importance of the presence of the defendant in Michigan on the various occasions when he is shown to have been there is much underrated by counsel. The visit of July 22, 1907, was for the purpose of securing the acceptance of his bid of July 19, 1907, and while defendant's counsel contends that he did not there tender the bid, which

is the word used by us in our former brief, we believe that the facts sustain the finding of the court below that "that bid was accepted by the board of control, Armstrong being present at the time Daily submitted his bid." We believe that Daily and the bid being contemporaneously there, it matters little whether he handed them the bid at that time or had previously transmitted it. He was tendering the bid in effect by his presence there. The transmission is of small importance but the presence of the defendant before the board may be of the utmost importance, the precise effect being dependent upon evidence which every one must concede would have been entirely out of place at the hearing on habeas corpus. In like manner each subsequent visit may prove of material importance in proving guilt upon the trial.

If we were to apply the principle of the doctrine sought to be here applied by defendant's counsel to the facts in the Huffstot case, previously cited, it is certain that no evidence was before the court in that case which would meet the demand here made. There the conspiracy to bribe extended over a considerable period and it was held that the presence of the defendant during this period unexplained was sufficient to warrant the extradition. In the case at bar, we have the presence during the period over which the conspiracy finally consummated into crime extended, and we have the further fact that necessary proceedings for a successful carrying out of the plan of the conspiracy were actually participated in by defendant. We submit that upon the indictment for bribery there can be no doubt raised by the showing of the record as to the propriety of the Governor's warrant of extradition.

We do not wish to be understood as conceding any material defects in the indictment for false pretenses. We insist that the facts recited comply with every requirement of the statute and that only formal words are omitted. Under the Michigan statutes, before referred to, it has been held that if the indictment contains direct and unequivocal averments of such facts—not being mere evidence—as lead immediately and of

necessity to a single and inevitable conclusion, the omission to draw that conclusion will not vitiate the pleading. *Evans v. People*, 12 Mich. 27. The information in that case was for murder and the conviction was for manslaughter and the indictment omitted in the formal averment, the name of the person killed. See also *People v. Kinney*, 110 Mich. 102. The principle of those cases is the converse of the proposition advanced in *Enders v. People*, 20 Mich. 233, relied upon by defendant's counsel, where it is stated:

"The results must follow from the facts and not from the pleader's conclusions."

A more careful investigation of the authorities cited by us in our principal brief to the effect that the nature of the pretenses used need not be averred in the indictment, convinces us that they were not correctly cited, but it will be seen that they were cited to the proposition of the effect of the warranty and of the supervision of Wrentmore, upon which the court below based his decision that no crime was charged. It will be further seen that such opinion was based upon the indictment for bribery and not at all upon the indictment for false pretenses, which does not contain any statement relative to the warranty nor the supervision of Wrentmore. We had confused the two indictments and the head-note of the opinion first cited, which sustains absolutely the argument there made, led us into an erroneous use of the case. But the point is a minor one and the error in no way affects the argument on any point that we deem pertinent in the cause now before the Court. A like confusing of the indictments on the part of counsel for defendant will be found in his brief where he asserts that we nowhere allege in the indictment for false pretenses that it was money that was paid for the machinery. Reference to each count of the indictment for false pretenses will show that it is described as lawful money of the United States. A like reference to the purchase money in the indictment for bribery did not so state although the bribe is thus described.

The brief period available for the printing of this brief before we must of necessity leave for the argument prevents a fuller treatment of the many questions presented by the brief filed for defendant. We believe, however, that nothing contained therein weakens in any way the logic of our principal brief and we do not believe that it would aid the Court to examine the scores of authorities cited by counsel, which we insist violate the ruling of the Court heretofore made upon each proposition. We therefore contend:

First, That the proceeding by habeas corpus does not throw upon the demanding State the burden of proving that the accused was guilty within the demanding State of some "essential ingredient" or "juridicial cause" of the crime or crimes with which he is charged.

Second, That the prima facie case made by the Governor's warrant can only be overcome by facts conceded or conclusively proven which show illegality in the action of the Governor whose warrant is questioned.

Third, That all questions touching the relation of any act of the accused within the demanding State to the commission of the offense charged should be left for proper determination by the courts of the demanding State.

Fourth, That both the indictments in the case at bar satisfy the requirements of the law.

Fifth, That the record does not show the absence of the accused from the demanding State at the time when the offenses were, if ever, committed, but on the contrary shows criminal acts within the demanding State at such times as would of necessity make them constituent parts of the offenses charged.

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STRASSHEIM, SHERIFF OF COOK COUNTY, v.
DAILY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 638. Argued April 3, 4, 1911.—Decided May 15, 1911.

In a *habeas corpus* proceeding in extradition it is sufficient if the count in the indictment plainly shows that the defendant is charged with a crime. *Pierce v. Creecy*, 210 U. S. 387.

Where a guaranty goes not to newness but to fitness of articles furnished, it is a material fraud to furnish old articles even if they can meet the test of the guaranty; and the fact that the purchaser may rely on the guaranty does not exclude the possibility that the purchase price was obtained by false representations as to the newness of the articles.

A State may punish one committing crimes done outside its jurisdiction for the purpose of producing detrimental effects within it when it gets the criminal within its power.

Commission of the crimes alleged in this indictment—bribery of a public officer and obtaining public money under false pretenses—warrants punishment by the State aggrieved even if the offender did not come into the State until after the fraud was complete.

An overt act becomes retrospectively guilty when the contemplated result ensues.

One who is never within the State before the commission of a crime producing its results within its jurisdiction is not a fugitive from justice within the rendition provisions of the Constitution, *Hyatt v. Cork-*

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ran, 188 U. S. 691, but, if he commits some overt and material act within the State and then absents himself, he becomes a fugitive from justice when the crime is complete if not before.

Although absent from the State when the crime was completed in this case, the party charged became a fugitive from justice by reason of his having committed certain material steps towards the crime within the State, and the demanding State is entitled to his surrender under Art. IV, § 2 of the Constitution of the United States and the statutes providing for the surrender of fugitives from justice.

THE facts are stated in the opinion.

Mr. Thomas E. Barkworth, with whom *Mr. Franz C. Kuhn*, Attorney General of the State of Michigan, *Mr. Ferdinand L. Barnett* and *Mr. Charles W. McGill* were on the brief, for appellant.

Mr. William S. Forrest for appellee.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an appeal from an order on *habeas corpus* discharging the respondent, Daily, from custody under a warrant of the Governor of Illinois directing his extradition to Michigan as a fugitive from justice from that State. Daily, it appears, had been indicted in Michigan for bribery and also for obtaining money from the State by false pretenses, and a requisition had been issued to which the warrant of the Governor of Illinois was the response. The District Judge who issued the *habeas corpus* was of opinion, however, that the facts alleged in the indictment for obtaining money by false pretenses did not constitute a crime against the laws of Michigan and that the evidence showed that Daily was not a fugitive from justice. We will consider these two questions in turn.

The third count of the indictment is the only one that needs to be stated, although all the counts alleged a false representation that certain machinery, to be sold to the State, was new, whereas in fact it was second-hand and

used, and the obtaining from the State of ten thousand dollars by means of such representation. The third count alleges that one Armstrong was warden of the Michigan State prison at Jackson, and, in conjunction with the Board of Control of the prison, authorized to buy machinery for a cordage plant in the prison; that he was authorized to accept the machinery and to pay for it from the funds of the State under his control; that said Board and Armstrong contracted with the Hoover and Gamble Company, acting through Daily, the agent, and one Eminger, the secretary of the company, for the purchase of such machinery, all of which, by the contract, was to be new; that Armstrong, Daily and Eminger had agreed beforehand to substitute old, worn and second-hand machinery, of less value, for that which was contracted for, the Board being ignorant of their intent and being deceived and defrauded by the substitution; that the second-hand machinery having been substituted, Armstrong, Daily and Eminger, with intent to cheat the State, to wit, on the first day of May, 1908, falsely pretended that the machinery so furnished was the new machinery required by the contract, and rendered bills for the same at the contract prices; that the bills were audited and allowed by Armstrong and the machinery paid for as new machinery, and that Armstrong, Daily and Eminger, by means of the false pretenses set up, obtained from the State of Michigan money, to wit, ten thousand dollars, the State and the Board of Control relying upon the false pretenses and being deceived thereby. We sum up the count thus broadly, because, although considerable ingenuity was spent in pointing out defects that would occur to no one outside of the criminal law, yet, whatever may be thought of the criticisms in Michigan, it is plain that the count shows that the defendant 'was substantially charged with a crime,' and upon *habeas corpus* in extradition proceedings, that is enough. *Pierce v. Creecy*, 210 U. S. 387, 405.

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It would seem, although the record is otherwise, that the judge below really went on the ground that the terms of the contract excluded a reliance upon the false representation alleged. The contract after stating that it was for "all new machinery to be manufactured by the Hoover & Gamble Company," contained a guaranty that the machinery should be "constructed in a thorough manner free from any defects of machinery or workmanship and finished in a first-class manner." It also provided for the retention of the last quarter of the price "until the machinery is all installed and tested, and operating, so as to fulfill the guaranty above given, to the satisfaction and approval of C. G. Wrentmore, Cons. Engr. of the Board of Control." The case is not to be tried on *habeas corpus*. Therefore it is enough to say that the guaranty and testing clauses do not exclude the possibility that the money was obtained by the false pretenses alleged. The guaranty goes, not to newness, but to workmanship and freedom from defects, and the approval of the consulting engineer is required only to show that the guaranty is fulfilled. The guaranty does not exclude other representations and undertakings. As has been seen it was expressed in the contract that the subject-matter of the guaranty was machinery to be manufactured and new. If old machinery was put in and represented to be new it was a material fraud.

We come then to the other question, whether the facts show that the defendant is a fugitive from justice. The bribery is laid under a *videlicet* as taking place on May 13, 1908; the false pretenses are averred to have been made on May 1, of the same year. On both of these dates the defendant was in Chicago. What happened, in short, was this. Daily had tried to sell second-hand machinery, in which he had an interest, to the State, and it was rejected. At the time of receiving notice, or afterwards, but within ten days before July 22, 1907, he had a conversation with Armstrong in Chicago, in which he said it was

a mistake not to accept his proposition; that he thought it could be arranged, and that there would be a nice present in it for Armstrong, which he said would be 'one thousand dollars anyway.' In the affidavit of Armstrong accompanying the requisition it is stated explicitly that the present was offered if Armstrong would let Daily substitute his old machinery for new in case a contract should be made.

On July 22, 1907, the successful bid of the Hoover and Gamble Company was sent in. It was signed by Daily, and Daily was with the Board of Control in Michigan, accompanying it, when it was considered and accepted. He had made a previous visit to the Board in the spring, and he was there in November to see the machinery and to delay shipment. At the latter date he told Armstrong that Eminger, the Secretary of the Company, had objected to the word 'new' in the contract and was afraid they would have trouble with the Consulting Engineer, but Armstrong replied that he did not think they would have any trouble with him. Finally, in April, 1908, Daily was at the prison again, in further execution of the program arranged by him and Armstrong, as the judge below properly found. Armstrong's affidavit states that Daily did substitute his old machinery, that it was understood that Armstrong was not to communicate the fact to the proper officer of the State or to the Board of Control, that the plant was put in, that the contract price was paid in full, and that thereafter Daily paid Armstrong fifteen hundred dollars, as he had agreed. But it may be assumed, for the moment, that Daily personally did no act in Michigan in any way connected with his plan otherwise than as we have stated above.

If a jury should believe the evidence and find that Daily did the acts that led Armstrong to betray his trust, deceived the Board of Control, and induced by fraud the payment by the State, the usage of the civilized world would warrant Michigan in punishing him, although he

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never had set foot in the State until after the fraud was complete. Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power. *Commonwealth v. Smith*, 11 Allen, 243, 256, 259. *Simpson v. State*, 92 Georgia, 41. *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 356. *Commonwealth v. Macloon*, 101 Massachusetts, 1, 6, 18. We may assume therefore that Daily is a criminal under the laws of Michigan.

Of course we must admit that it does not follow that Daily is a fugitive from justice. *Hyatt v. Corkran*, 188 U. S. 691, 712. On the other hand, however, we think it plain that the criminal need not do within the State every act necessary to complete the crime. If he does there an overt act which is and is intended to be a material step toward accomplishing the crime, and then absents himself from the State and does the rest elsewhere, he becomes a fugitive from justice, when the crime is complete, if not before. *In re Cook*, 49 Fed. Rep. 833, 843, 844. *Ex parte Hoffstot*, 180 Fed. Rep. 240, 243. *In re William Sultan*, 115 No. Car. 57. For all that is necessary to convert a criminal under the laws of a State into a fugitive from justice is that he should have left the State after having incurred guilt there, *Roberts v. Reilly*, 116 U. S. 80, and his overt act becomes retrospectively guilty when the contemplated result ensues. Thus in this case offering the bid and receiving the acceptance were material steps in the scheme, they were taken in Michigan, and they were established in their character of guilty acts when the plot was carried to the end, even if the intent with which those steps were taken did not make Daily guilty before. *Swift v. United States*, 196 U. S. 375, 396.

We have given more attention to the question of time than it is entitled to, because of the seeming exactness of

the evidence. But a shorter and sufficient answer is to repeat that the case is not to be tried on *habeas corpus*, and that when, as here, it appears that the prisoner was in the State in the neighborhood of the time alleged it is enough.

Judgment reversed, prisoner remanded.
